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सं. 29] नई दिल्ली, जुलाई 16—जुलाई 22, 2023, शनिवार/ आषाढ़ 25—आषाढ़ 31, 1945
No. 29] NEW DELHI, JULY 16—JULY 22, 2023, SATURDAY/ASHADHA 25— ASHADHA 31, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 19 जुलाई, 2023

का.आ. 1193.—भारतीय जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री सिद्धार्थ मोहन्ती के स्थान पर श्री सतपाल भानू (जन्म तिथि: 10.12.1965), अपर क्षेत्रीय प्रबंधक (प्रभारी), क्षेत्रीय कार्यालय, भारतीय जीवन बीमा निगम (एलआईसी), भोपाल को पद का कार्यभार ग्रहण करने की तारीख से अधिवर्षिता की तारीख (अर्थात 31.12.2025) तक अथवा अगले आदेशों तक, जो भी पहले हो, 2,05,400 रुपए से 2,24,400 रुपए के वेतनमान में भारतीय जीवन बीमा निगम में प्रबंध निदेशक के पद पर नियुक्त करती है।

[फा. सं. ए-11011/04/2023-बीमा-I]

विनोद कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi the 19th July, 2023

S.O. 1193.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation of India Act, 1956 (31 of 1956), the Central Government hereby appoints Shri Sat Pal Bhanoo (date of birth: 10.12.1965) Additional Zonal Manager (In-charge), Zonal Office, LIC, Bhopal as Managing Director, LIC of India in the pay scale of Rs. 2,05,400/- to Rs. 2,24,400/- *vice* Shri Siddhartha Mohanty with effect from the date of assumption of charge of office and upto the date of his superannuation (i.e. 31.12.2025), or until further orders, whichever is earlier.

[F. No. A-11011/04/2023-Ins.I]

VINOD KUMAR, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 11 जुलाई, 2023

का.आ. 1194.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास न्यूयॉर्क मैं श्री रवि यादव, कनिष्ठ सचिवालय सहायक, को 11 जुलाई, 2023 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/01/2023(22)]

एस.आर.एच. फहमी, निदेशक (कांसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 11th July, 2023

S.O. 1194.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Ravi Yadav, Junior Secretariat Assistant in the Consulate General of India, New York, as Assistant Consular Officer to perform Consular services with effect from July 11, 2023.

[F. No.T.4330/01/2023(22)]

S.R.H. FAHMI, Director (Consular)

नई दिल्ली, 14 जुलाई, 2023

का.आ. 1195.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, केंद्र सरकार, 14 जुलाई, 2023 से कांसुलर सेवाएं के निर्वहन करने के लिए विदेश में भारतीय मिशनों/पोस्टों में सहायक कांसुलर अधिकारियों के रूप में इस मंत्रालय के नीचे उल्लिखित अधिकारियों की नियुक्ति करता है:

क्रम सं.	अधिकारी का नाम और पद(श्री/सर्व)	मिशन/पोस्ट जिसमें सहायक कांसुलर अधिकारी के रूप में नियुक्त किया गया है
1	शिखा ठाकुर, सहायक अनुभाग अधिकारी	भारत के प्रधान कोंसलावास, टोरंटो
2	हिमांशु त्यागी, सहायक अनुभाग अधिकारी	भारत का प्रतिनिधि कार्यालय, अल्माटी

3	आयुष शर्मा, सहायक अनुभाग अधिकारी	भारत के प्रधान कोंसलावास, हूस्टन

[फा. सं. टी. 4330/01/2023(23)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-1)

New Delhi, the 14th July, 2023

S.O. 1195.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints the below mentioned officials of this Ministry, as Assistant Consular Officers in Indian Missions/Posts abroad to perform Consular services with effect from July 14, 2023:

Sl. No.	Name & Rank of the Officer	Mission/Post wherein appointed as Assistanct Consular Officer
1	Shikha Thakur, Assistant Section Officer	Consulate General of India, Toronto
2	Himanshu Tyagi, Assistant Section Officer	Representative Office of India, Almaty
3	Ayush Sharma, Assistant Section Officer	Consulate General of India, Houston

[F. No. T. 4330/01/2023(23)]

S.R.H. FAHMI, Director (CPV-I)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 11 जुलाई, 2023

का.आ. 1196.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केरल राज्य सरकार की अधिसूचना सं. जीओ (एमएस.) सं. 190/2021/गृह, दिनांक 30.10.2021, गृह (एम) विभाग के माध्यम से जारी सम्मति से, श्री विजयकुमार, संयुक्त सचिव, सतर्कता विभाग, भारी उद्योग एवं लोक उद्यम, नई दिल्ली द्वारा श्री रोक्कम गोपाला राव, तत्कालीन प्रबंध निदेशक, हिंदुस्तान न्यूज़प्रिंट लिमिटेड (एचएनएल), वेलूर, कोट्टायम और अज्ञात अन्यों के विरुद्ध मैसर्स हिंदुस्तान न्यूज़ प्रिंट लिमिटेड (एचएनएल) को 4.5 करोड़ रुपए की सदोष हानि कारित करने के संबंध में दर्ज कराई गई शिकायत दिनांक 23.12.2020, जो भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (भ्रष्टाचार निवारण अधिनियम, 1988 में 26.07.2018 से किए गए संशोधन से पहले के अनुसार) की धारा 13(2) सपठित धारा 13(1) (सी) और (डी) और इसके मूल अपराधों के तहत दण्डनीय हैं, तथा जिसके आधार पर दिनांक 29.12.2021 को सीबीआई प्रकरण आरसी0332021ए0005 पंजीकृत किया गया है, से उत्पन्न अपराध(धों) का अन्वेषण करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (दिनांक 29.12.2021 से कार्योत्तर प्रभाव से) समस्त केरल राज्य में करती है।

[फा. सं. 228/28/2023-एवीडी-II)]

संजय कुमार चौरसिया, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 11th July, 2023

S.O. 1196.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Kerala, issued vide Notification No. G.O. (Ms.) No.190/2021/Home dated 30.10.2021, Home(M) Department, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 29.12.2021) to the whole State of Kerala for investigation into the offence(s) arising out of the complaint dated 23.12.2020 lodged by Sh. Vijayakumar, Joint Director, Vigilance Department of Heavy Industry and Public Enterprises, New Delhi against Sh. Rokkam Gopala Rao, the then Managing Director, Hindustan Newsprint Limited (HNL), Veloor, Kottayam and unknown others for causing wrongful loss of Rs. 4.5 Crores to M/s Hindustan News Print Limited (HNL) punishable under Section 13(2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act, 1988 (49 of 1988) (as stood before amendment made to the Prevention of Corruption Act, 1988 w.e.f. 26.07.2018) and substantive offences thereof on which a CBI case RC0332021A0005 has been registered on 29.12.2021 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/28/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 11 जुलाई, 2023

का.आ. 1197.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, झारखंड राज्य सरकार की अधिसूचना ज्ञापन सं.-10/सी.बी.आई.-401/2023-1071/रांची, दिनांक 04.03.2023, गृह, कारागार एवं आपदा प्रबंधन विभाग, रांची के माध्यम से जारी सम्मति से, इंडियन बैंक को लगभग 561.71/- लाख रूपये की सदोषपूर्ण हानि कारित करने हेतु (1) मैसर्स राजेश्वरी आयरन एंड स्टील कंपनी प्रा.लि., (2) श्री सुमित कुमार केजरीवाल, पुत्र श्री अशोक कुमार केजरीवाल, निदेशक, (3) श्रीमति आशा केजरीवाल, पत्नी श्री अशोक कुमार केजरीवाल, निदेशक, (4) प्रतिरूपणकर्ता श्री प्रवेश कुमार मुखर्जी, निवासी शेख पाड़ा, अन्यतनगर, बिष्णुपुर, अलीपुर, जिला दक्षिण 24 परगना, पश्चिम बंगाल, (5) अज्ञात गैर-सरकारी व्यक्तियों और अज्ञात लोक सेवकों द्वारा इंडियन बैंक (पूर्ववर्ती इलाहाबाद बैंक, जमशेदपुर मुख्य शाखा) से धोखे से ऋण लेने के संबंध में भारतीय दंड संहिता, 1860 (1860 का 45) की धारा 120 बी सपठित धारा 409, 420, 465, 467, 468, 471, भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (जैसा कि भ्रष्टाचार निवारण अधिनियम, 1988 में दिनांक 26.07.2018 को किए गए संशोधन से पहले विहित किया गया था) की धारा 13 (2) सपठित धारा 13(1)(डी) के तहत किए गए अभिकथित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त झारखंड राज्य में करती है।

[फा. सं. 228/41/2023-एवीडी-II)

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1197.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Jharkhand, issued vide Notification Memo No.-10/C.B.I.-401/2023-1071/Ranchi dated 04.03.2023, Home, Prisons and Disaster Management Department, Ranchi, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Jharkhand for investigation into the offence(s) under section 120B r/w section 409, 420, 465, 467, 468, 471 of the Indian Penal Code, 1860 (45 of 1860), section 13(2) r/w section 13(1)(d) of the Prevention of Corruption Act, 1988 (49 of 1988) (as stood before the amendment made to the Prevention of Corruption Act, 1988 w.e.f. 26.07.2018) alleged to have been committed by (1) M/s Rajeshwari Iron & Steel Co. Pvt. Ltd., (2) Shri Sumit Kumar Kejriwal, S/o Shri Ashok Kumar Kejriwal, Director, (3) Smt. Asha Kejriwal, W/o Shri Ashok Kumar Kejriwal, Director, (4) Impersonator Shri Parvash Kumar Mukherjee, R/o Sekh Para, Anyetnagar, Bishnupur, Alipur, District South 24 Paragana, West Bengal, (5) unknown private persons and unknown public servants pertaining to fraudulently availing loan from Indian Bank (erstwhile Allahabad Bank, Jamshedpur Main Branch) causing wrongful loss of approx. Rs. 561.71 Lakhs to the Indian Bank, and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/41/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 12 जुलाई, 2023

का.आ. 1198.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश राज्य सरकार की अधिसूचना सं. गृह(ए)ए(9)-9/2022, दिनांक 21.02.2023, गृह विभाग, शिमला के माध्यम से जारी सम्मति से, हिमाचल प्रदेश पुलिस विभाग में आरक्षक के पद पर नियुक्ति के लिए दिनांक 27.03.2022 को आयोजित लिखित परीक्षा से पूर्व प्रश्न पत्र लीक करने एवं परिचालित करने के संबंध में थाना, अर्की, जिला सोलन में भारतीय दंड संहिता, 1860 (1860 का 45) की धारा 505(2) सपठित धारा 34 के तहत दर्ज प्राथमिकी सं. 28, दिनांक 17.04.2022 से जुड़े अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त हिमाचल प्रदेश राज्य में करती है।

[फा. सं. 228/63/2022-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 12th July, 2023

S.O. 1198.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Himachal Pradesh, issued vide Notification No. Home(A)A(9)-9/2022 dated 21.02.2023, Department of Home, Shimla, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Himachal Pradesh for investigation into the offence(s) relating to FIR No. 28 dated 17.04.2022 registered at Police Station, Arki, District Solan, under section 505(2) r/w section 34 of the Indian Penal Code, 1860 (45 of 1860) pertaining to question paper getting leaked and circulated before the written examination for recruitment to the post of Constable in Himachal Pradesh Police Department conducted on 27.03.2022 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/63/2022-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 13 जुलाई, 2023

का.आ. 1199.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, झारखंड राज्य सरकार की अधिसूचना सं. 10/सी.बी.आई.-407/2023-2106, दिनांक 12.05.2023, गृह, कारागार एवं आपदा प्रबंधन विभाग के माध्यम से जारी सम्मति से, श्री श्याम मांझी, पुत्र श्री बंशी मांझी, वर्ग-IV मजदूर, सीसीएल तापिन साउथ एरिया, चरही, हज़ारीबाग द्वारा श्री विजय प्रसाद मेहता, प्रबंधक, सीसीएल, तापिन साउथ रेलवे साईडिंग, चरही, हज़ारीबाग के विरूद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (2018 का अधिनियम 16 द्वारा यथासंशोधित) की धारा 7 के तहत दिनांक 08.05.2023 को दर्ज कराई गई शिकायत, जिसके आधार पर दिनांक 15.05.2023 को सीबीआई प्रकरण आरसी.0242023ए0004 पंजीकृत किया गया है, से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (दिनांक 15.05.2023 से कार्योत्तर प्रभाव से) समस्त झारखंड राज्य में करती है।

[फा. सं. 228/38/2023-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 13th July, 2023

S.O. 1199.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Jharkhand, issued vide Notification No.10/C.B.I.-407/2023-2106 dated 12.05.2023, Home, Prisons and Disaster Management Department hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 15.05.2023) to the whole State of Jharkhand for investigation into the offence(s) arising out of the complaint dated 08.05.2023 lodged by Shri Shyam Manjhi, S/o Shri Banshi Manjhi, Cat-IV Mazdoor, CCL Tapin South Area, Charhi, Hazaribagh against Shri Vijay Prasad Mehta, Manager, CCL, Tapin South Railway Siding, Charhi, Hazaribagh under section 7 of the Prevention of Corruption Act, 1988 (49 of 1988) (as amended by Act 16 of 2018), based on which a CBI case RC.0242023A0004 has been registered on 15.05.2023 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/38/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 17 जुलाई, 2023

का.आ. 1200.—केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केरल राज्य सरकार, गृह (एम) विभाग की अधिसूचना संख्या जी.ओ. (एमएस.) सं. 160/2021/गृह, दिनांक 25.09.2021 के माध्यम से जारी सम्मति से, मैसर्स मूकाम्बिका होम्स एंड अपार्टमेंट्स प्राइवेट लिमिटेड इसके निदेशकों श्री अजीत सी.एस एवं श्री आर. सेथुरामन द्वारा प्रतिनिधित और भू-स्वामियों नामत: सुश्री उषा मोहन, श्री अजीथ मोहन और कर्ज़दारों, नामत: श्री दिनेश मरायिल, श्री हेमंथ अरेदाथ, श्री अजीथ पलीआथ, श्री अरुण. के.वी, श्री राकेश थीएनचेरी, श्री बिजिथ विश्वनाथन, श्री अरुण. वी, श्री स्रीराज. एस., श्री सुभाष चंद्रन एवं श्री अजीथ कुन्नाथुल्ली और यूनियन बैंक ऑफ इंडिया के अज्ञात कार्मिकों और अज्ञात अन्य के विरूद्ध यूनियन बैंक ऑफ इंडिया को 618.17 लाख रूपये के सदोष हानि पहुँचाने के लिए दिनांक 20.02.2021 को श्री वेनुगोपालन. आई.के, सामान्य उप-प्रबंधक, उप क्षेत्रीय प्रमुख, यूनियन बैंक ऑफ इंडिया, एर्नाकुलम ग्रामीण द्वारा भारतीय दंड संहिता (1860 का 45) की धारा 120बी सपठित धारा 420, 467, 468 एवं 471 और भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (दिनांक 26.07.2018 से प्रभावी भ्रष्टाचार निवारण अधिनियम, 1988 में किए गए संशोधन से पूर्व यथा निहित) की धारा 13(2) सपठित धारा 13(1) (डी) के तहत दंडनीय अपराधों के संबंध में दर्ज कराई गई शिकायत और उसके मौलिक अपराध जिन पर दिनांक 27.12.2021 को सीबीआई मामला आरसी0332021ए0004 दर्ज किया गया है, से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध (धों) से जुड़े या उससें सम्बद्ध किसी दुष्प्रयास, दुष्प्रेरणा

और/अथवा षडंयन्त्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (दिनांक 27.12.2021 से कार्योत्तर प्रभाव से) समस्त केरल राज्य में करती है।

[फा. सं. 228/24/2023-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 17th July, 2023

S.O. 1200.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Kerala, issued vide Notification No. G.O. (Ms.) No.160/2021/Home dated 25.09.2021, Home(M) Department, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 27.12.2021) to the whole State of Kerala for investigation into the offence(s) arising out of the complaint dated 20.02.2021 lodged by Shri Venugopalan. I. K, Assistant General Manager & Dy. Regional Head, Union Bank of India, Ernakulam Rural against M/s. Mookambika Homes & Apartments Pvt. Ltd. represented by its Directors Mr. Ajith C.S and Mr. R. Sethuraman and land owners namely Ms. Usha Mohan, Mr. Ajith Mohan and borrowers, namely Shri Dinesh Marayil, Shri Hemanth Aredath, Shri Ajith Paliath, Shri Arun. K.V, Shri Rakesh Thiencheri, Shri Bijith Viswanathan, Shri Arun. V, Shri Sreeraj. S., Shri Subash Chandran and Shri Ajith Kunnathully and unknown Bank officials of Union Bank of India and unknown others for causing wrongful loss of Rs. 618.17 Lakhs to the Union Bank of India punishable under section 120-B r/w section 420, 467, 468 and 471 of the Indian Penal Code (45 of 1860) and section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 (49 of 1988) (as stood before amendment made to the Prevention of Corruption Act, 1988 w.e.f. 26.07.2018) and substantive offences thereof on which a CBI case RC0332021A0004 has been registered on 27.12.2021 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/24/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

कृषि एवं किसान कल्याण मंत्रालय

(कृषि अनुसंधान एवं शिक्षा विभाग)

नई दिल्ली,18 जुलाई, 2023

का.आ. 1201.—केन्द्रीय सरकार, कृषि एवं किसान कल्याण मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में **भा.कृ.अ.प. का पूर्वी अनुसंधान परिसर कृषि प्रणाली का पहाड़ी एवं पठारी अनुसंधान केन्द्र प्लान्डु, रांची-834010 (झारखण्ड)** को, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतदद्वारा अधिसूचित करती है।

[फा. सं.13-05/2020-हिन्दी]

एस. के. उपाध्याय, अवर सचिव

MINISTRY OF AGRICULTURE AND FARMER WELFARE

(Department of Agricultural Research and Education)

New Delhi, the 18th July, 2023

S.O. 1201.—In pursuance of sub-Rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules 1976, the Central Government, Ministry of Agriculture & Farmer Welfare, Department of Agricultural Research & Education hereby notifies the **I.C.A.R Research Complex for Eastern Region Farming**

System Research Centre for Hill and Pleateau Region, Plandu, Ranchi-834010 (Jharkhand) where more than 80% of staff have acquired the working knowledge of Hindi.

[F. No. 13-05/2020-Hindi]

S.K.UPADHYAY, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 27 जून, 2023

का.आ. 1202.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स टीसीआरसी इंस्पेक्शन प्राइवेट लिमिटेड, प्लाट नं. 337, सेक्टर-1ए, ओस्लो सर्किल, टैगोर रोड, गांधीधाम-370201, गुजरात (जिसे एतद्पश्चात उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं॰का.आ. 3975, के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-।, अर्थात, बॉक्साइट और लौह अयस्क के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन कांडला पत्तन, ओखा पत्तन और पोरबंदर पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-। का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त अधिकारियों को पर्याप्त सहयोग और सहायता प्रदान करेगी;

(ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यो का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी ।

[फा.सं. के-16014/7/2023 - निर्यात निरीक्षण]

एम. बालाजी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the, 27th June, 2023

S.O. 1202.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government now recognizes, M/s TCRC Inspections Private Limited, Plot no. 337, Sector- 1A, Oslo Circle, Tagore Road Gandhidham- 370201, Gujarat (hereinafter referred to as the said agency), as an agency for three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Group - I, namely, Bauxite and Iron Ore, as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Official Gazette *vide* number S.O.3975 dated 20th December, 1965, before export of the said Minerals and Ores at Kandla Port, Okha Port, and Porbandar Port, subject to the following conditions, namely: -

(i) the said agency shall extend adequate cooperation and assistance to the officers nominated by the Export Inspection Council on this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965;

(ii) the said agency, in performance of their function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/7/2023 - Export Inspection]

M. BALAJI, Jt. Secy.

नई दिल्ली, 27 जून, 2023

का.आ. 1203.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, प्लाट नं. 28बी/1(एसपी), 28बी/2(एसपी), द्वितीय मेन रोड, अम्बातूर इंडस्ट्रियल एस्टेट, अम्बातूर, चेन्नई-600058, तमिलनाडु, (जिसे एतद्पश्चात उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं॰का.आ. 3975, और दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं. का.आ. 3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-।, अर्थात, लौह अयस्क तथा समूह-II, अर्थात, बैराइट्स, रेड ओक्सइड और सिलमनाइट के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन चेन्नई पत्तन, कामराजर पत्तन तथा कट्टुपल्ली पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-। का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त अधिकारियों को पर्याप्त सहयोग और सहायता प्रदान करेगी;

(ii) यह अभिकरण, इस अधिसूचना में यथाविनिर्दिष्ट अपने कार्यो का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी ।

[फा. सं. के-16014/6/2023 - निर्यात निरीक्षण]

एम. बालाजी, संयुक्त सचिव

New Delhi, the, 27th June, 2023

S.O. 1203.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government now recognizes, M/s SGS India Private Limited, Plot No 28B/1 (SP), 28 B/2(SP), Second Main Road, Ambattur Industrial Estate, Ambattur, Chennai-600058, Tamil Nadu, (hereinafter referred to as the said agency), as an agency for three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Group - I, namely, Iron Ore and Group II, namely, Barytes, Red Oxide and Sillimanite, as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Official Gazette *vide* number S.O.3975 dated 20th December, 1965 and S.O.3978 dated 20th December, 1965 respectively, before export of the said Minerals and Ores at Chennai Port, Kamarajar Port and Kattupalli Port, subject to the following conditions, namely: -

(i) the said agency shall extend adequate cooperation and assistance to the officers nominated by the Export Inspection Council on this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965 and Export of Minerals and Ores – Group II (Inspection) Rules, 1965;

(ii) the said agency, in performance of their function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/6/2023-Export Inspection]

M. BALAJI, Jt. Secy.

वस्त्र मंत्रालय

नई दिल्ली, 12 जुलाई, 2023

का.आ. 1204.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय, जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:-

1. **राष्ट्रीय फैशन प्रौद्योगिकी संस्थान (निफ्ट), पंचकुला परिसर, सेक्टर 23, पंचकुला, हरियाणा-134116,**
2. **राष्ट्रीय फैशन प्रौद्योगिकी संस्थान (निफ्ट), पटना परिसर, मिथापुर फार्म, पटना, बिहार-800001**

[फा. सं. ई-11016/2/2023-हिंदी]

गौरव कुमार, आर्थिक सलाहकार

MINISTRY OF TEXTILE

New Delhi, the 12th July, 2023

S.O. 1204.—In pursuance of sub-rule(4) of Rule 10 of the Official language (Use for official Purpose of the Union) Rules, 1976, the central Government hereby notifies the following office of the Ministry of Textile, more than 80% staff whereof have acquired working knowledge of Hindi:

1. **National Institute of Fashion Technology, (NIFT) Campus Panchkula, Sector 23, Panchkula, Haryana-134116**
2. **National Institute of Fashion Technology, (NIFT) Campus Patna, Mithpur Farms Patna, Bihar -800001**

[F. No. E-11016/2/2023-Hindi]

GAURAV KUMAR, Economic Adviser

श्रम और रोजगार मंत्रालय

नई दिल्ली, 18 जुलाई, 2023

का.आ. 1205.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, **भिलाई स्टील प्लांट ऑफ़ सेल** के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लि., प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

(1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिदिर्ष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;

(2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्यधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-

(i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टयों को सत्यापित करने; या

(ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या

(iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-

(क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है ; या

(ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना ।

(6) विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वत: रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा ।

[सं. एस-38014/04/2020-एस एस-I]

बी. के. बिस्वास, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th July, 2023

S.O. 1205.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Bhilai Steel Plant of SAIL** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

(1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';

(2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;

(3) the contribution for the exempted period, if already paid, shall not be refundable;

(4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —

(i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or

(ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(d) make copies of or take extracts from any register, account

book or other document maintained in such factory, establishment, office or other premises; or

(e) exercise such other powers as may be specified.

(6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/04/2020-SS-I]

B. K. BISWAS, Under Secy.

नई दिल्ली, 11 जुलाई, 2023

का.आ. 1206.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **इंडियन आयल कॉर्पोरेशन लिमिटेड, जगतसिंघपुर (ओडिशा)** के प्रबंधतंत्र के संबद्ध नियोजकों और **पारादीप रिफाइनरी एम्पलॉईस यूनियन, जगतसिंघपुर (ओडिशा)** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर, पंचाट (रिफरेन्स न.-38/2022)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था।

[फा. सं. एल -30011/22/2022-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1206.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 38/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Indian Oil Corporation Limited, Jagatsinghpur (Odisha)** and **Paradip Refinery Employees Union, Jagatsinghpur (Odisha)** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No. L-30011/22/2022-IR(M)]

D. K. HIMANSHU Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-cum-LABOUR COURT, BHUBANESWAR

Present :

Shri Dinesh Kumar Singh,
Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar

ID Case No. 38 of 2022

Date of passing award – 4th day of May, 2023

Between :

The Chief General Manager (HR),
Indian Oil Corporation Ltd.,
Paradip Refinery Project,
PO-Jimani, Via-Kujang,
Dist-Jagatsinghpur (Odisha)-754141 … 1st Party Management

(And)

The General Secretary,
Paradip Refinery Employees Union,
C/o-Indian Oil Corporation Ltd.,
Paradip Refinery Project,
PO-Jimani, Via-Kujang,
Dist-Jagatsinghpur (Odisha)-754141 … 2nd Party Union

Appearances :

Mr. Ajay Luhach . … For 1st Party Management

Mr. Sasmaya Kumar Behera … For 2nd Party Union

AWARD

The Government of India in the Ministry of Labour & Employment, New Delhi have referred the present dispute existing between the employers in relation to the Management of Indian Oil Corporation Limited and their Workman/Union under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) vide their order No. L-30011/22/2022-IR (M) dated 27.9.2022 to this Tribunal for adjudication to the following effect.

"Whether demand of Paradip Refinery Employees Union on behalf of Shri Naresh Kumar Bhuyan and one other against the management of IOCL, Paradip Refinery, Paradip regarding violation of Sec-33 of Industrial Dispute Act, 1947 by issuing a revised transfer order during the pendency of conciliation is proper, legal and justified? If yes, what relief these workmen are entitled to?

2. After receipt of the schedule of the reference, notice was issued to the 2nd Party-Union for filing of Statement of Claim and subsequently the General Secretary of the 2nd Party-Union and representative of the 1st Party-Management, M/s Indian Oil Corporation Limited, Paradip appeared and jointly filed their Memorandum of Settlement in Form–H along with a petition moved by the 2nd Party-Union for withdrawal of this case.

3. The 1st Party-Management and the 2nd Party-Union in their Memorandum of Settlement have stated that the change of assignment in respect of the disputant workmen was done for corporation's requirement and the management shall regularize the consequent effect of absence and back wages of the concerned workmen as per service rule related to the change in job assignment. They have also agreed not to make any reference in future for the same issue of the present settlement.

4. They have further stated that both of them have understood, agreed and accepted this agreement / settlement done amicably, with due volition, free from any influence, force from any corner and by virtue of this settlement both of them have settled the industrial dispute and difference between them. Thus both the parties have jointly filed their Memorandum of Settlement before this Tribunal for passing of appropriate order for the closure of the present case in view of the terms of memorandum of settlement.

5. In view of the discussions made above, it appears that the 1st Party-Management and the 2nd Party-Union have amicably resolved their disputes out of the court and at present no dispute is existing between them for the self same issue

6. After considering the facts and circumstance and the submissions of the stake holders of this case, the Tribunal is of the opinion that whatever dispute was existing between the 1st Party-Management and the 2nd Party-Union has already been settled. Hence the award is passed in terms of the Memorandum of Settlement arrived at between the 1st Party-Management and the 2nd Party-Union. The Memorandum of Settlement filed by the parties in this case forms part of the award.

7. This is the award of this Tribunal.

Dictated and corrected by me

DINESH KUMAR SINGH, Presiding Officer

FORM – H

(See Rule – 58)

FORM OF MEMORANDUM OF SETTLEMENT

MEMORANDUM OF SETTLEMENT MADE ON THIS_____ DAY OF MARCH 2023 UNDER THE INDUSTRIAL DISPUTES ACT, 1947, ARRIVED AT BETWEEN THE MANAGEMENT OF INDIAN OIL CORPORATION LIMITED (IN SHORT IOCL) REPRESENTED THROUGH Senior Manager (EMS), INDIAN OIL CORPORATION LIMITED, PARADIP REFINERY, PARADIP AND IT'S 2 NUMBERS OF WORKMEN REPRESENTED THROUGH THE GENERAL SECRETARY, PARADIP REFINERY EMPLOYEES UNION, PARADIP.

PARTIES TO THE SETTLEMENT

REPRESENTING THE MANAGEMENT:

Shri Ajay Luhach,

at present working as Senior Manager (EMS)

Indian oil Corporation Limited,

Paradip Refinery, Paradip.

REPRESENTING THE WORKMEN

Sri Sasmaya Kr. Behera,

The General Secretary,

Paradip Refinery Employees Uniuon, Paradip

For and on behalf of Sri Naresh Chandra Bhuyan and

Sri Satyajeet Sahoo.

SHORT RECITAL OF THE CASE

WHERE AS the workmen Sri NAresh Kumar Bhuyan and Sri Satyajeet Sahoo through their General Secretary, Paradip Refinery Employees Union, Paradip raised dispute over violation of Section 33 of the Industrial Disputes Act, 1947 and after reference of the said dispute to the Ld'Central Government Industrial Tribunal, Bhubaneswar, the same has been registered as I.D. Case No. 38/2022. The reference of the dispute is as follows;

SCHEDULE

"Whether demand of Paradip Reginery Employees Union on behalf of Sri Naresh Kumar Bhuyan and one other against the management of IOCL, Paradip Refinery, Paradip regarding violation of Section 33 of Industrial Dispute Act, 1947 by issuing a revised transfer order during the pendency of conciliation is proper, legal and justified? If yes, what relief these workmen are entitled to?

AND

WHEREAS during the pendency of the dispute in question, a discussion between The Employer of Indian Oil Corporation Limited and Paradip Refinery Employees Union, Paradip representating the workmenSri Naresh Kumar Bhuyan and Sri Satyajeet Sahooheld on 04-03-2023 and 05-03-2023 to settle the dispute in question and after a protracted discussion, both the management/employer and the union/workmen agreed to settle the dispute under the following terms and conditions.

TERMS & CONDITIONS OF SETTLEMENT

1. As the change of assignment was done for corporation's requirement, hence it is mutually agreed between both the parties to effect this change in job assignment. IOCL management shall regularize the consequent effect of absence and back wages as per service rule related to this change in job assignment.
2. That, it is further agreed that no reference can be given in future for same issue of the present settlement.
3. That, both the parties understand, agree and accept that, this agreement/settlement is amicable and with due volition and free from any influence and force from any corner and by virtue of the present settlement both the parties settled the industrial disputeand difference between the parties.
4. That, it is further agreed that both the parties shall submit this Memorandum of Settlement before the Hon'ble Central Government Industrial Tribunal, Bhubaneswar so as to accept this settlement and pass appropriate order for closure of ID case no. – 38/2022 in view of this amicable settlement.

The settlement is signed on this_____ day of March, 2023 in presence of the parties and witnesses.

Signature of Management Signature of the Union

Representative Representative

Signature of Witnesses

1.

2.

नई दिल्ली, 11 जुलाई, 2023

का.आ. 1207.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारतीय जीवन बीमा निगम, चूरू (राजस्थान)** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री उम्मेद कुमार पुत्र श्री महावीर प्रसाद, चूरू (राजस्थान)** के बीच अनुबंध में निर्दिष्ट **औद्योगिक अधिकरण एवं श्रम न्यायालय, बीकानेर, पंचाट (रिफरेन्स**

न.- सी.आई.टी.आर. न. 01 ऑफ़ 2010 सी.आई.एस. न. 14 ऑफ़ 2014 को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था।

[सं. एल -17012/22/2002-IR(M)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1207.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. C.I.T.R. No. 01 of 2010 C.I.S. No. 14 of 2014** of the **Industrial Tribunal cum Labour Court, Bikaner** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhartiya Jeevan Bima Nigam, Churu (Rajasthan)** and **Shri Ummed Kumar S/o Shri Mahavir Prasad, Churu (Rajasthan)** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No. L-17012/22/2002-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुलग्नक

न्यायालय– न्यायाधीश, औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, बीकानेर
पीठासीन अधिकारी : कृष्ण स्वरूप चलाना, R.J.S.(DJC)
C.I.T.R.. No. 01 of 2010

C.I.S. No 14 of 2014

CNR NO.RJBK050003602010

उम्मेद कुमार पुत्र श्रीं महावीर प्रसाद जाति भाट निवासी किसान छात्रावास के पास, सरदारशहर जिला चूरू जरिये अधिकृत प्रतिनिधि ।

... **प्रार्थी / श्रमिक**

विरूद्ध

शाखा प्रबन्धक, भारतीय जीवन बीमा निगम सरदारशहर जिला चूरू ।

... **अप्रार्थी / नियोजक**

प्रसंग अन्तर्गत धारा 10(1)(घ),
औद्योगिक विवाद अधिनियम, 1947

उपस्थित प्रतिनिधि :–

1. प्रार्थी–श्रमिक के प्रतिनिधि श्री संतोष कुमार सैनी ।
2. अप्रार्थी–नियोजक के प्रतिनिधि श्री गजेन्द्र खत्री ।

अधिनिर्णय

दिनांक : 25 अप्रेल,2023

प्रार्थी के सेवापृथक विवाद में माननीय राजस्थान उच्च न्यायालय जोधपुर के निर्णय दिनांक 26.05.2005 की पालना में श्रम विभाग, भारत सरकार नई दिल्ली ने औद्योगिक विवाद अधिनियम,1947 की धारा 10 की उपधारा (1) के खण्ड (घ) के अन्तर्गत जारी अधिसूचना कमांक **L17012/22/2002 दिनांक 22 AUG 2005** के द्वारा प्रेषित इस प्रसंग के अन्तर्गत निम्न

विवाद अधिनिर्णयार्थ इस न्यायालय को भेजा था :–

^*Whether the action of the management of LIC of India terminating the service of Shri Umed Kumar W.e.f. 24/06/2002(AN) is Justified ? If not, what relief is the entitled to and from which date ? "

2. उक्त प्रसंग प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया ।

3. प्रार्थी श्रमिक ने स्टेटमेंट ऑफ क्लेम प्रस्तुत करते हुए यह निवेदन किया है कि प्रार्थी भारतीय जीवन बीमा निगम के नियोजन में अप्रार्थी के अधीन शाखा सरदारशहर कार्यालय में विभागीय चयन प्रकिया के जरिये चयनित होकर स्थाई रिक्त पद पर दिनांक 01.04.2002 को चपरासी के पद पर नियुक्त हुआ तथा अपनी नियुक्ति तिथि से सेवापृथक करने की तिथि 24.06.2002 तक लगातार बिना किसी व्यवधान के कार्यरत कर्मकार नियोजित रहा । अप्रार्थी संस्थान जो कि एक औद्योगिक संस्था है तथा प्रार्थी जो कि अप्रार्थी के नियोजन में बतौर कर्मकार नियोजित होने से प्रार्थी एवं अप्रार्थी का संबंध मजदूर एवं मालिक का रहा है तथा प्रार्थी जो कि अप्रार्थी संस्थान में एक औद्योगिक कर्मकार होने से प्रार्थी की सेवा औद्योगिक विवाद अधिनियम 1947 एवं औद्योगिक विवाद नियम 1957 के आज्ञापक प्रावधानों के विपरीत कानूनन समाप्त नहीं की जा सकती । प्रार्थी द्वारा अप्रार्थी के अधीन निरन्तर 85 दिन कार्य किया । इस प्रकार प्रार्थी की सेवा अप्रार्थी संस्थान में स्थाई पद पर होते हुए भी प्रार्थी को मात्र बेरोजगार करने की मंशा से प्रार्थी की सेवा अप्रार्थी द्वारा अपने मौखिक आदेश दिनांक 24.06.2002 को बाद दोपहर से बतौर छँटनी के समाप्त कर दी तथा ऐसा करने से पूर्व अप्रार्थी द्वारा औद्योगिक विवाद अधिनियम एवं नियम की पालना तनिक मात्र भी नहीं की गई । प्रार्थी को सेवापृथक करने से पूर्व अप्रार्थी नियोजक द्वारा अपने संस्थान में कार्यरत कर्मकारों की कोई वरीयता सूची जारी नहीं की तथा न ही ऐसी किसी सूची का प्रकाशन ही किया तथा न ही ऐसी कोई सूची अपने कार्यालय के नोटिस बोर्ड पर ही चस्पा की गई । प्रार्थी को सेवापृथक करने से पूर्व अप्रार्थी नियोजक द्वारा निर्धारित नोटिस अथवा नोटिस वेतन तथा छँटनी मुआवजा राशि का भुगतान भी नहीं किया तथा प्रार्थी को सुनवाई का भी अवसर तक नहीं दिया गया । अप्रार्थी संस्थान में प्रार्थी के साथ के एवं बाद के नियोजित कर्मकार आज भी नियोजित है जो नियमित सेवा का लाभ प्राप्त कर चुके हैं तथा प्रार्थी जो कि सेवा में नियोजन के लिए तत्पर रहा, को नियोजन के हक से महरूम रखने की नीयत से प्रार्थी को सेवापृथक किया जबकि उससे कनिष्ठ कर्मकारों को सेवा में बदस्तूर बनाए रखा । अप्रार्थी द्वारा प्रार्थी को सेवापृथक करने के पश्चात अपने चेहते व्यक्ति चुन्नीलाल हरिजन को प्रार्थी के स्थान पर नियोजन का लाभ दिया जाकर उसे नियुक्ति दी तथा प्रार्थी को नियोजन के हक से जानबूझ कर वंचित रखा । यही नहीं अप्रार्थी संस्थान में प्रार्थी के पद का कार्य एवं पद होते हुए भी प्रार्थी को नियोजन ने आहूत तक नहीं किया गया जो अप्रार्थी नियोजक की समस्त कार्यवाही औद्योगिक विवाद अधिनियम की धारा 25 एच के विरूद्ध रही है । प्रार्थी सेवापृथक की तिथि से आज दिन तक बेकार एवं बेरोजगार बैठा है तथा अन्यत्र नियोजित नहीं रहा है। प्रार्थी के सेवापृथक विवाद में श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा प्रकरण न्यायनिर्णयार्थ हेतु रेफरेंस आदेश न करने पर प्रार्थी द्वारा माननीय राजस्थान उच्च न्यायालय जोधपुर के समक्ष सिविल रिट याचिका सं. 3025/03 संस्थित करने पर उक्त रिट याचिका में पारित निर्णय दिनांक 26.05.2005 पर यह रेफरेंस भारत सरकार द्वारा माननीय न्यायाधिकरण को रेफरेंस आदेश फरमाया गया । उक्त रेफरेंस श्रीमान् न्यायाधिकरण को प्राप्त होने के पश्चात अप्रार्थी संस्थान में प्रार्थी के पद का कार्य रिक्त होने पर अप्रार्थी द्वारा प्रार्थी के प्रकरण को तकनीकी आधार पर लोपित करने की मंशा से अपने पत्र दिनांक 10.08.2004 के जरिये प्रार्थी को अपने मूल प्रमाण पत्रों सहित अप्रार्थी के समक्ष उपस्थित होने पर प्रार्थी द्वारा अपने समस्त प्रमाण पत्रों सहित साक्षात्कार के लिए आहूत करने पर प्रार्थी द्वारा अपने समस्त प्रमाण पत्रों सहित अप्रार्थी के समक्ष उपस्थित होने पर विपक्षी नियोजक द्वारा प्रार्थी के सेवा विवाद के जेरकार होने से नियोजन का लाभ न देकर इंतजार में रखा तत्पश्चात अपने पत्र दिनांक 17.10.2005 से पुनः आहूत कर प्रार्थी को नियोजन का लाभ दिया गया जिसके तहत प्रार्थी दिनांक 03.10.2005 से अप्रार्थी के नियोजन में चतुर्थ श्रेणी कर्मचारी के पद अप्रार्थी संस्थान की सुजानगढ शाखा में कार्यरत रहते हुए नियमित सेवा का अंजाम अदा करता चला आ रहा है । इस प्रकार प्रार्थी अपनी सेवापृथक की तिथि 24.06.2002 से पुनः सेवा में लिए जाने की तिथि 03.10.2005 तक की तिथि तक की अवधिकाल की सेवा को नियमित कराने एवं उक्त अवधिकाल का

समस्त पिछला वेतन भत्ता तथा देय परिलाभ पाने का अधिकारी रहा है । अन्त में क्लेम स्टेटमेंट प्रस्तुत कर निवेदन किया गया प्रार्थी के पक्ष में तथा अप्रार्थी नियोजक के विरूद्ध निम्न अनुतोष का अधिनिर्णय पारित आदेश फरमाया जावे :–

(क) जरिये अधिनिर्णय घोषित आदेश फरमाया जावे कि प्रार्थी को उसके नियोजक द्वारा अपने मौखिक आदेश दिनांक 26.06.2002 को बाद दोपहर से प्रार्थी की सेवा समाप्त करना उचित एवं वैध न होने से उक्त सेवा समाप्ति का आदेश व इससे संबंधित आदेश को निरस्त फरमाया जावे तथा प्रार्थी को सेवापृथक की तिथि से अप्रार्थी के नियोजन में संवेतन एवं सेवा की निरन्तरता के लाभ सहित बहाल आदेश फरमाया जावे ।

(ख) प्रार्थी को सेवापृथक की तिथि से पुनः सेवा में बहाल होने की तिथि तक का समस्त पिछला वेतन एवं भत्ता तथा पारिणामिक परिलाभ जो कि प्रार्थी अप्रार्थी के नियोजन में नियोजित रहते हुए प्राप्त करता, भी प्रदान कराया जावे तथा प्रार्थी के सेवापृथक विवाद के जेरकार रहते हुए अप्रार्थी द्वारा दिनांक 03.10.2005 को पुनः चतुर्थ श्रेणी कर्मचारी के पद पर सेवा में नियोजित किए जाने के कारण प्रार्थी को सेवापृथक की तिथि 24.06.2002 से उक्त तिथि तक की सेवा में निरन्तरता का लाभ दिया जाते हुए उक्त तिथि तक का देय परिलाभ प्रदान कराया जावे तथा सेवा बदस्तूर कायम रखते हुए नियमित सेवा का लाभ भी विपक्षी नियोजक से प्रदान कराया जावे ˙

(ग) अन्य कोई अनुतोष न्यायालय उचित समझे प्रार्थी को दिलाया जावे तथा समस्त वाद व्यय व हर्जा खर्चा भी प्रार्थी को अप्राथी नियोजक पक्ष से प्रदान कराया जावे ।

4. नियोजक–अप्रार्थी की ओर से इस स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत किया गया । अपने जवाब में स्टेटमेंट ऑफ क्लेम में अंकित अधिकतर मदों को अस्वीकार किया गया तथा प्राथमिक आपत्तियों में यह निवेदन किया गया कि प्रार्थी को चतुर्थ श्रेणी पद पर भारतीय जीवन बीमा निगम (अस्थाई कर्मचारी रोजगार) निर्देश 1993 के अर्न्तगत पूर्णतया अस्थाई तौर पर निश्चित अवधि के लिए रोजगार उपलब्ध करवाया गया था व उक्त निर्देश के निर्देश संख्या (viii) के अनुसार किसी भी अस्थाई कर्मचारी का पद स्थाई होने का अधिकार सृजित नहीं हो जाता है तथा ऐसा अस्थाई कार्यकाल उक्त अवधि की समाप्ति पर जिस अवधि के लिए वह कार्यरत है की समाप्ति पर स्वतः ही समाप्त हो जाता है । उक्त स्पष्ट प्रावधान के अनुसार प्रार्थी को कोई अधिकार नहीं है उक्त पद पर रहने का अधिकार नहीं रखता है जिस पर उसे अस्थाई रूप से नियुक्त किया गया है तथा प्रस्तुत क्लेम निरस्त किये जाने योग्य है । आगे मदानुसार जवाब में यह निवेदन किया गया कि यह गलत है कि प्रार्थी को विभागीय चयन प्रकिया के जरिये चयनित होकर स्थाई रिक्त पद पर नियुक्ति दी गई हो । सही तथ्य यह है कि अप्रार्थी निगम ने अपने आदेश दिनांक 27.03.2002 जो कि भारतीय जीवन बीमा निगम (अस्थाई कर्मचारी रोजगार) निर्देश 1993 के अर्न्तगत जारी किया गया था, के द्वारा प्रार्थी को पूर्णतया अस्थाई तौर पर मात्र 85 दिन की निश्चित अवधि के लिए संविदा पर दिनांक 01.04.2002 से दिनांक 24.06.2002 तक की अवधि के लिए नियुक्ति दी थी तथा उक्त नियुक्ति पत्र में अन्य शर्तो के अतिरिक्त यह स्पष्ट शर्त थी कि प्रार्थी की सेवाएं उक्त अवधि के पश्चात स्वतः ही समाप्त हो जावेगी । प्रार्थी ने उक्त शर्तो को स्वीकार करते हुए उक्त अवधि में कार्य किया था व प्रार्थी की सेवाएँ उक्त अवधि दिनांक 24.06.2002 को समाप्त होने पर स्वतः ही समाप्त हो गयी, जिसके लिए अलग से कोई आदेश नहीं निकाला गया । अप्रार्थी निगम द्वारा किसी भी अधिनियम अथवा विधि के प्रावधानों के विपरीत कोई कार्य नहीं किया गया है । प्रार्थी की नियुक्ति पूर्णतया अस्थाई रूप से निश्चित अवधि के लिए की गई थी । इसलिए किसी वरियता सूची का प्रश्न ही नहीं उठता है । प्रार्थी की नियुक्ति पूर्णतया अस्थाई रूप से निश्चित अवधि के लिए ही गई थी । इसलिए किसी नोटिस अथवा मुआवजे का प्रश्न ही नहीं उठता है । यह गलत है कि अप्रार्थी निगम में प्रार्थी के साथ अथवा बाद के कोई भी कर्मचारी आज भी नियोजित हो व नियमित सेवा का लाभ प्राप्त कर रहे हो । सही तथ्य यह है कि अप्रार्थी निगम द्वारा भारतीय जीवन बीमा निगम (अस्थाई कर्मचारी रोजगार) निर्देश 1993 के अर्न्तगत समय समय पर आकस्मिक कार्य हेतु निश्चित अवधि हेतु रोजगार उपलब्ध करवाया जाता है । यह गलत है कि अप्रार्थी निगम द्वारा प्रार्थी के स्थान पर चुन्नीलाल अथवा अन्य किसी व्यक्ति को नियोजन का लाभ दिया हो। यह भी गलत है कि अप्रार्थी द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एच अथवा अन्य किसी प्रावधानों के विपरीत कोई कार्य किया हो । सही तथ्य यह है कि अप्रार्थी निगम में उक्त चुन्नीलाल नामक कोई व्यक्ति प्रार्थी के स्थान पर कार्यरत नहीं है । प्रार्थी द्वारा मद सं. 10 में अंकित समस्त

कथन उसके द्वारा मद सं. 11 में अंकित किये कथनों से स्वयं ही विरोधाभाषी है । प्रार्थी ने इस मद मे स्वयं को आज दिनांक तक बेरोजगार होना अंकित किया है व मद सं. 11 में दिनांक 03.10.2005 से कार्यरत होना अंकित किया है । इस प्रकार यह स्पष्ट है कि प्रार्थी द्वारा झूँठ बोलकर मात्र अप्रार्थी निगम को हैरान व परेशान करने की गरज से प्रस्तुत विवाद उठाया गया है, जिसके लिए प्रार्थी के विरूद्ध उचित कार्यवाही की जानी चाहिये । अन्त में प्रार्थी के स्टेटमेंट ऑफ क्लेम को मय हर्जे खर्चे के खारिज किये जाने का निवेदन किया है ।

5. स्वयं प्रार्थी श्रमिक साक्ष्य में उपस्थित नहीं हुआ है । अपने क्लेम के समर्थन में साक्ष्य प्रस्तुत करने हेतु अधिकरण द्वारा पर्याप्त व समुचित अवसर दिये जाने के बावजूद भी श्रमिक की ओर से कोई साक्ष्य पेश नहीं की गई। इसके अतिरिक्त श्रमिक प्रतिनिधि ने भी जाहिर किया कि वे साक्ष्य पेश करना नहीं चाहते। इसी स्तर पर अप्रार्थी नियोजक द्वारा भी यह जाहिर किया गया कि वे भी कोई साक्ष्य पेश करना नहीं चाहते हैं। इस पर न्यायालय द्वारा **दिनांक 17.04.2023** को दोनो पक्षों की साक्ष्य बंद की गई ।

6. बहस सुनी गई तथा पत्रावली का अवलोकन किया गया।

7. भारत सरकार द्वारा प्राप्त निर्देश का निस्तारण करने के लिए हमें यह अवधारित करना है कि ^*Whether the action of the management of LIC of India terminating the service of Shri Umed Kumar W.e.f. 24/06/2002(AN) is Justified ? If not, what relief is the entitled to and from which date ? "

8. इस संदर्भ में रेफरेंस का निर्धारण करने के लिए पहले इस बिंदू पर विचार किया जाना आवश्यक है कि प्रार्थी की सेवामुक्ति के पूर्व के एक वर्ष में प्रार्थी ने 240 दिन की कार्यावधि पूर्ण कर ली थी ? औद्योगिक विवाद अधिनियम की धारा 25 बी में इस संबंध में स्पष्ट प्रावधान किया गया है । धारा 25 बी में बताई गई निरन्तर सेवा की अवधि पूर्ण कर लिये जाने के पश्चात यदि किसी कर्मकार को सेवा मुक्त किया जाता है तो उसी परिस्थिति में औद्योगिक विवाद अधिनियम की धारा 25 एफ, 25 जी, 25 एच का लाभ श्रमिक को मिल सकता है । अतः हमें यह देखना होगा कि आया प्रार्थी द्वारा औद्योगिक विवाद अधिनियम की धारा 25 बी के अनुसार उसकी सेवा मुक्ति के पूर्व के एक वर्ष में निरन्तर विधान में बताये अनुसार 240 दिन की कार्यावधि पूर्ण कर ली थी ? इस संदर्भ में प्रार्थी ने अपने मांग पत्र में यह निवेदन किया है कि प्रार्थी भारतीय जीवन बीमा निगम के नियोजन में अप्रार्थी के अधीन शाखा सरदारशहर कार्यालय में विभागीय चयन प्रक्रिया के जरिये चयनित होकर स्थाई रिक्त पद पर दिनांक 01.04.2002 को चपरासी के पद पर नियुक्त हुआ तथा अपनी नियुक्ति तिथि से सेवापृथक करने की तिथि 24. 06.2002 तक लगातार बिना किसी व्यवधान के कार्यरत कर्मकार नियोजित रहा । अप्रार्थी संस्थान जो कि एक औद्योगिक संस्था है तथा प्रार्थी जो कि अप्रार्थी के नियोजन में बतौर कर्मकार नियोजित होने से प्रार्थी एवं अप्रार्थी का संबंध मजदूर एवं मालिक का रहा है तथा प्रार्थी जो कि अप्रार्थी संस्थान में एक औद्योगिक कर्मकार होने से प्रार्थी की सेवा औद्योगिक विवाद अधिनियम 1947 एवं औद्योगिक विवाद नियम 1957 के आज्ञापक प्रावधानों के विपरीत कानूनन समाप्त नहीं की जा सकती । प्रार्थी द्वारा अप्रार्थी के अधीन निरन्तर 85 दिन कार्य किया । इसके खण्डन में अप्रार्थी नियोजक ने अपने जवाब मांग पत्र में यह निवेदन किया है कि यह गलत है कि प्रार्थी को विभागीय चयन प्रक्रिया के जरिये चयनित होकर स्थाई रिक्त पद पर नियुक्ति दी गई हो । सही तथ्य यह है कि अप्रार्थी निगम ने अपने आदेश दिनांक 27.03.2002 जो कि भारतीय जीवन बीमा निगम (अस्थाई कर्मचारी रोजगार) निर्देश 1993 के अर्न्तगत जारी किया गया था, के द्वारा प्रार्थी को पूर्णतया अस्थाई तौर पर मात्र 85 दिन की निश्चित अवधि के लिए संविदा पर दिनांक 01.04.2002 से दिनांक 24.06.2002 तक की अवधि के लिए नियुक्ति दी थी तथा उक्त नियुक्ति पत्र में अन्य शर्तो के अतिरिक्त यह स्पष्ट शर्त थी कि प्रार्थी की सेवाएं उक्त अवधि के पश्चात स्वतः ही समाप्त हो जावेगी । प्रार्थी ने उक्त शर्तो को स्वीकार करते हुए उक्त अवधि में कार्य किया था व प्रार्थी की सेवाएं उक्त अवधि दिनांक 24.06.2002 को समाप्त होने पर स्वतः ही समाप्त हो गयी, जिसके लिए अलग से कोई आदेश नहीं निकाला गया । अप्रार्थी निगम द्वारा किसी भी अधिनियम अथवा विधि के प्रावधानों के विपरीत कोई कार्य नहीं किया गया है । प्रार्थी की नियुक्ति पूर्णतया अस्थाई रूप से निश्चित अवधि के लिए की गई थी । इसलिए किसी वरियता सूची का प्रश्न ही नहीं उठता है ।

9. इस प्रकार प्रार्थी के मांग पत्र एवं अप्रार्थी के जवाब मांग पत्र में परस्पर विरोधाभाष कथन आये हैं। स्टेटमेंट ऑफ क्लेम मे प्रार्थी स्वयं ने नियोजक के यहां मात्र 85 दिन निरन्तर कार्य करना बताया है। हमें यह देखना है कि क्या प्रार्थी ने अप्रार्थी के नियोजन में उसकी सेवामुक्ति की दिनांक से पूर्व एक कैलेण्डर वर्ष में 240 दिनों से अधिक कार्य किया अथवा नहीं ? इस तथ्य को साबित करने का भार स्वयं प्रार्थी पर है । प्रार्थी इस संदर्भ में मौखिक अथवा दस्तावेजी साक्ष्य प्रस्तुत कर इस तथ्य को साबित कर सकता था, परन्तु प्रार्थी ने किसी प्रकार की कोई मौखिक अथवा दस्तावेजी साक्ष्य प्रस्तुत नहीं की है । यहां तक कि स्वयं प्रार्थी साक्ष्य देने न्यायालय के समक्ष उपस्थित नहीं आया । अतः साक्ष्य के अभाव में प्रार्थी का अप्रार्थी के अधीन 240 दिन कार्य करने का तथ्य साक्ष्य से साबित नहीं है।

10. प्रार्थी ने अपने मांग पत्र में अप्रार्थी के नियोजन में स्थाई नियुक्त होकर अप्रार्थी के अधीन 85 दिन लगातार कार्य करना बताया है परन्तु इस तथ्य को अप्रार्थी ने अपने जवाब मांग पत्र में स्पष्ट इन्कार करते हुए प्रार्थी को अप्रार्थी निगम ने अपने आदेश दिनांक 27.03.2002 जो कि भारतीय जीवन निगम (अस्थाई कर्मचारी रोजगार) निर्देश 1993 के अर्न्तगत जारी किया गया था, के द्वारा प्रार्थी को पूर्णतया अस्थाई तौर पर मात्र 85 दिन की निश्चित अवधि के लिए संविदा पर दिनांक 01.04.2002 से दिनांक 24.06.2002 तक की अवधि के लिए नियुक्ति दिये जाने का कथन किया है । इस तथ्य को साबित करने का भार स्वयं प्रार्थी पर था परन्तु प्रार्थी ने अपनी स्थाई नियुक्ति के संबंध में न तो कोई मौखिक साक्ष्य पेश की है तथा ना ही किसी प्रकार का कोई नियुक्ति आदेश या अन्य कोई दस्तावेज ही पेश किया है, जिससे यह साबित होता हो कि प्रार्थी को अप्रार्थी द्वारा स्थाई नियुक्ति दी हो । इस प्रकार प्रार्थी की साक्ष्य के अभाव में अप्रार्थी के कथनानुसार प्रार्थी को अस्थाई तौर पर 85 दिवस के लिए (दि0 01.04.02 से 24.06.02 तक) नियुक्ति दिया जाना प्रमाणित होता है।

11. जहां तक स्टेटमेंट क्लेम की मद संख्या 11 मे वर्णित तथ्यो का प्रश्न है, इस संबंध में प्रार्थी ने अपने मांग पत्र के पैरा सं0 11 में यह वर्णित किया है कि अप्रार्थी ने अपने पत्र दिनांक 17.10.2005 से पुनः आहुत कर प्रार्थी को नियोजन का लाभ दिया गया जिसके तहत प्रार्थी दिनांक 03.10.2005 से अप्रार्थी के नियोजन में चतुर्थ श्रेणी कर्मचारी के पद पर अप्रार्थी संस्थान की सुजानगढ शाखा में कार्यरत रहते हुए सेवा का अंजाम अदा करता चला आ रहा है । इस प्रकार प्रार्थी अपनी सेवापृथक की तिथि 24.06.2002 से पुनः सेवा में लिए जाने की तिथि 03.10.2005 तक की तिथि तक की अवधि काल की सेवा को नियमित कराने एवं उक्त अवधिकाल का समस्त पिछला वेतन भत्ता तथा देय परिलाभ पाने का अधिकारी रहा है । अप्रार्थी ने अपने जवाब मांग पत्र में प्रार्थी द्वारा प्रस्तुत मांग पत्र. की मद सं. 11 में वर्णित तथ्यों में से माननीय उच्च न्यायालय द्वारा आदेश पारित करने व प्रस्तुत रेफरेन्स किये जाने के तथ्य को स्वीकार किया है तथा इस मद में अंकित शेष तथ्यों को अस्वीकार करते हुए प्रार्थी इस मद में अंकित किसी प्रकार का कोई अनुतोष अथवा अन्य कोई अनुतोष प्रार्थी प्राप्त करने का अधिकारी नहीं है । इस तथ्य को साबित करने का भार स्वयं प्रार्थी पर था,परन्तु इस संदर्भ में प्रार्थी ने किसी प्रकार की कोई मौखिक अथवा दस्तावेजी साक्ष्य प्रस्तुत नहीं की है तथा स्वयं प्रार्थी साक्ष्य मे उपस्थित नहीं हुआ है, । अतः साक्ष्य के अभाव मे मद संख्या 11 में वर्णित तथ्य भी प्रमाणित करने मे प्रार्थी असफल रहा है।

12. इस प्रकार उपरोक्त विवेचन एवं विश्लेषण से श्रमिक को हटाये जाने से पूर्व एक कलेण्डर वर्ष में 240 दिन लगातार काम करने का तथ्य प्रार्थी साबित नहीं कर पाया है। इस आधार पर प्रार्थी औद्योगिक विवाद अधिनियम की धारा 25 एफ 25 जी व 25 एच का लाभ प्राप्त करने का अधिकारी नहीं है। अतः ऐसी स्थिति में श्रमिक की सेवामुक्ति उचित एवं वैध है तथा प्रार्थी कोई भी राहत पाने का अधिकारी नहीं है। अतः प्रार्थी कोई भी राहत पाने का अधिकारी नहीं है। स्टेटमेंट ऑफ क्लेम खारिज किये जाने योग्य है ।

पंचाट

13. अतः केन्द्रीय सरकार द्वारा प्रेषित उक्त प्रसंग को उत्तरित करते हुए यह पंचाट निम्न प्रकार से पारित किया जाता है कि :–

प्रार्थी–श्रमिक अपनी सेवा मुक्ति दिनांक 24.06.2002 के पूर्व के एक वर्ष में 240 दिन की कार्य अवधि पूर्ण कर ली हो, यह तथ्य अपने पक्ष में साबित करने में पूर्ण रूप से असफल रहे हैं । अतः ऐसी स्थिति में the action of the management of LIC of India terminating the service of Shri Umed Kumar W.e.f. 24/06/2002(AN) is Justified. इस प्रकार प्रार्थी स्टेटमेंट ऑफ क्लेम में दर्ज कोई भी राहत एवं राशि को पाने के अधिकारी नहीं हैं । अतः ऐसी स्थिति में प्रार्थी– श्रमिक द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम अप्रार्थी–नियोजक के विरूद्ध अस्वीकार किया जाकर एतद्द्वारा खारिज किया जाता है ।

उक्त अधिनिर्णय औद्योगिक विवाद अधिनियम 1947 की धारा 17(1) के अर्न्तगत केन्द्र सरकार को प्रकाशनार्थ भेजा जावे ।

कृष्ण स्वरूप चलाना, न्यायाधीश

14. अधिनिर्णय आज **दिनांक 25.04.2023** को मेरे द्वारा विवृत न्यायालय में लिखाया जाकर हस्ताक्षरित कर सुनाया गया।

नई दिल्ली, 11 जुलाई, 2023

का. आ. 1208.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स लाइफ इन्शुरेन्स कॉर्पोरेशन ऑफ़ इंडिया, पटना** के प्रबंधतंत्र के संबद्ध नियोजकों और **नेशनल लाइफ इन्शुरेन्स**

एम्प्लाइज एसोसिएशन, पटना के बीच अनुबंध में निर्दिष्ट **औद्योगिक अधिकरण एवं श्रम न्यायालय, पटना, पंचाट (रिफरेन्स न.-02 (सी) 2017)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था।

[सं. एल -17012/24/2016-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1208.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 02 (C) 2017** of the **Industrial Tribunal cum Labour Court, Patna** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Life Insurance Corporation of India, Patna** and **National Life Insurance Employees Association, Patna** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No. L-17012/24/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No.:- 02 (C) of 2017

Between the management of Sr. Divisional Manager, M/S Life Insurance Corporation of India, Jeevan Prakash, Divisional Office No.-1 Frazer Road, Patna (Bihar)-800001 and Their workman Sri Bhakta Mahendra, Ex-Part Time Gardener, represented by through the General Secretary, National Life Insurance Employees Association, A/51, Sachiwalya Colony, Kankarbagh, Patna (Bihar-800020.

For the management:- Sri Neeraj Narain Priyadarshi, Administrative Officer, (Legal) LIC of India.

For the workman:- Sri Amrendra Kumar Ojha, General Secretary of said Union.

Present:- Manoj Shankar
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dt- 24th May, 2023.

By the adjudication order no.- L-17012/24/2016-IR(M) New Delhi, dated- 30.03.2017 the Govt. of India Ministry of Labour New Delhi has referred under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act") the following dispute between the management of Sr. Divisional Manager, M/S Life Insurance Corporation of India, Jeevan Prakash, Divisional Office No.-1 Frazer Road, Patna (Bihar)-800001 and Their workman Sri Bhakta Mahendra, Ex- Part Time Gardener, represented by through the General Secretary, National Life Insurance Employees Association, A/51, Sachiwalya Colony, Kankarbagh, Patna (Bihar-800020. For adjudication to this tribunal.

SCHEDULE

" Whether the action of the management of Life Insurance Corporation of India, Patna in terminating the service of Sri Bhakta Mahendra, Ex-Part Time Gardener w.e.f. 27.12.2013 without following the procedure under section 25F of I.D.Act is legal and justified? If not, to what relief the concerned worker is entitled to and from which date?"

2. Upon the receiving the reference schedule this tribunal issued notice to both the sides. Both parties appeared and filed their written statement.

3. The contention of the workman as per his statement of claim is that the workman Bhakta Mahendra was duly appointed by the management vide S.R No.- 326889 as part time gardener in the month of January 1992. The workman served the corporation sincerely and regularly for more than 22 years. It is further asserted during the course his service period his daughter died of illness due to want of proper medical aids and poor diet. Due to death of his daughter and sick health of his wife the workman himself became perplexed with disturbance of his peace of mind. It is further asserted that for the welfare and proper treatment of his wife, but the workman absented from office but he used to inform from time to time to his office about his absence. It is further asserted that the management did not take the cognizance of his request and whimsically issued him a charge sheet-cum-show cause notice on 20.11.2013 with pre-determined mindset to remove from the service of the corporation and finally workman has been removed from his service w.e.f. 27.12.2013. It is further asserted that workman submitted his appeal and memorial to the appellate authority against the punishment order dt- 27.12.2013 but his appeal has been turned down by LIC of India with his negative attitude. It has been further asserted that all the authorities the Disciplinary Authority, Appellate Authority and Chairman did not apply their own mind and wisdom in a justified way and also not keeping in view of principles of HRD and principle of natural and social justice as well as fair practice and they passed order arbitrarily. It is also asserted that management did not consider the medical certificate of fitness of the workman and there by he was not allowed to resume his duties. Management resorted an Unfair Labour Practice ignoring the resumption of the duty of the workman, When he came to the office to join after fitness. The workman seek following relief:-

(I) To quash the charge sheet -cum-show cause notice dt-20.11.2013 and the punishment order dt- 27.12.2013.

(II) To quash the order dt- 17.05.2014 of the Appellate Authority.

(iii) To reinstate the service of the workman with full back salary along with consequential benefits.

(iv) To compensate all the relief and benefits which the workman has been made to suffer mentally personally and socially

(v) Any other relief as tribunal may deem fit.

4. On the other hand the contention of the management is that present reference is bad in law and the same is not fit to be adjudicated. The reference has been arisen without any cause of action hence it is liable to be dismissed. It is further asserted that Bhakta Mahendra is not a workman in relation to the management of Life Insurance Corporation, as the petitioner /workman was appointed on probation as part time employee for the post of gardener on13.01.1992. It is further asserted that the petitioner / workman was in habit of absent from the duty without prior information or sanction of leave by the competent authority. The petitioner/workman was absent from 13.12.2010 in violation of laid down rules and regulation. Prior his absence he was already sanctioned 290 days extra ordinary leave. The management vide letter dt- 16.02.2011, 14.09.2011, and 24.03.2013 intimating to the petitioner / workman through speed post regarding his absence from duty that was unauthorized and he was advised to resume his duty immediately failing which a disciplinary proceeding will be initiated but yet the petitioner / workman did not resume his duty moreover the petitioner / workman neither sent reply to any letter sent by the management and he did not come to join his duty. Petitioner/ workman also did not reply to the explanation called for from the management side vide letter dt- 02.07.2013 and 19.08.2013. It is further asserted that when the petitioner / workman did not join his duty the manager (Estate) Sri S.K.Pandey was asked to conduct an enquiry vide letter dt- 24.09.2013. Who visited the permanent address of the petitioner /workman and found he was absolutely fine and he was living normal life. Sri S.K.Pandey also reported to the management, the petitioner / workman has admitted he has received all the communications and petitioner / workman gave a written assurance to resume his duty on 21.10.2013. It has been further asserted that the petitioner / workman has given a letter on 21.10.2013 to allow him to resume duty and mentioned the cause of absence due to sickness of wife and children. It is further asserted that a charge sheet-cum-show cause notice dt-20.11.2013 was issued to the petitioner /workman because his absence from duties from 13.12.2010 attracted the provision of Regulation 39 (4) (iii) of the LIC of India Staff) Regulation, 1960 read with explanation one. This rules itself states that a employee shall be deemed to have abandoned his post if he absents himself from duty without leave sanctioned for the continuous period of 90 days without intimation in writing. It is further asserted that on receiving charge sheet- cum- show cause notice dt- 20.11.2013. The petitioner / workman filed his reply on 13.12.2013 but the management Disciplinary Authority did not find the reply satisfactory and passed an order on dt- 27.12.2013 imposing penalty removal from the service which was commensurate with the gravity of misconduct of which the petitioner was found guilty. It is further asserted that the Chairman and the Appellate Authority had meticulously observed the contentions raised by the petitioner / workman in his appeal and in his Memorial dt- 25.03.2014 and 04.01.2016 respectively but competent authority they did not find any merit in his appeal and memorial warranting interference with the penalty " Removal from service" imposed by the competent authority. It is further asserted the petitioner /workman was found guilty of misconduct by remaining

unauthorizedly absence from duty without prior intimation and sanction of leave from office and the penalty imposed by the competent authority following commensurate with the gravity of misconduct. The principle of natural justice was thoroughly followed by giving ample opportunity to workman to resume his duty but he remained absent continuously for about three years. Accordingly, the claim of the workman Sri Bhaka Mahendra is fit to be rejected.

5. Upon pleading of the rival parties and the terms of reference, the following points arise due for the adjudication:-

(a) Whether the dispute as raised by the Sri Bhakta Mahendra is an Industrial Dispute as defind u/s 2(K) of the Industrial Dispute Act, 1947.

(b) Whether the management has refused the workman Sri BhaktaMahendra to resume his duty when he has given written application for his joining on 21.10.2013 is justified.

(C) Whether the action of the management in terminating the services of Sri Bhakta Mahendra on 27.12.2013 without following the procedure of section-25(F) of the I.D.Act is legal and justified?"

FINDINGS

6. First of all this tribunal takes the first point for the adjudication. It has been pleaded by the management side since Bhaka Mahendra is not a workman hence dispute as raised by the Bhakta Mahendra is not maintainable under the Industrial Dispute Act. Moreover, this dispute is not an Industrial Dispute as defined under section-2(K) of the Industrial Dispute Act. First of all definition of Industrial dispute that mentioned in section 2(K) of the I.D.Act is to be securitized **Section-2(K) " Industrial dispute" means any dispute or difference between employers and employer, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of** any persons. This section itself denotes that any dispute between employer employee and between workmen and workman that relates to with the employment or non employment and a condition of labour of any person comes under the purview of Industrial Dispute. Here to decide as to whether this dispute as raised in this case is an industrial dispute or not, It has to examine first Whether Bhakta Mahendra acquires the status of the workman or not i.e defind in section 2(S) of the I.D.Act. Section 2(S) says- "workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such peson.

(i) Who is subject to theAir Force Act, 1950 (45 or 1950), or the Army Act, 1959 46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison , or

(iii) Who is employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity draws was exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

As per the claim of the workman Bhakta Mahendra he was appointed as a part time gardener by the management and his salary roll no.- 326889. This claim of the workman Bhakta Mahendra established this fact LIC where Bhakta Mahendra was working is an employer and Bhakta Mahendra the part time gardener that come under the purview of employee (workman) and during the course of the his service, he has been dismissed from the service that's why this dispute was raised by the union of Employee of LIC on behalf of the workman when he was removed from the service. Accordingly the status of the Sri Bhakta Mahendra was workman under the provision of 2(S) of the I.D.Act and the dispute raised by the his union to challenge his removal from service before the conciliation officer an employee of LIC is an Industrial Dispute as derived in section 2(K) of the Industrial Dispute Act, Accordingly this issue is decided in favour of the workman Sri Bhakta Mahendra.

7. Now point no.-(ii) & (iii) are taken together for adjudication to decide these issues, this tribunal securitizes the evidence as brought by the rival parties on the record.

8. On behalf of the management one witness namely Sri Arbind Kumar Sinha has been examined as a M.W-1. Besides oral evidence the following documents have been marked as Exts by the management i.e

(i) Ext.-M/1- Letter of dt- 14.09.2011 issued by the manager (E&OS) to Manager (P&IR) of LIC of India

Divisional Office-1 regarding absence of Sri Bhakta Mahendra from 13.12.2010 to 14.09.2011.

(ii) Ext.-M/2-Lletter of dt-16.02.2011 issued by Manager, LIC to Bhakta Mahendra for regarding his absence from 13.12.2010 to 16.02.2011.

(iii) Ext.-M/2-1-Letter dt- 14.09.2011 issued by manager, LIC to the Bhakta Mahendra regarding his absence from 13.12.2010.

(iv) Ext.-M/2-2-Letter of dt- 24.04.2013 issued by Manager (E&OS) to Bhakta Mahendra for his unauthorized absence since 13.12.2010.

(v) Ext.-M/2-3-Letter of dt- 02.07.2013 issued by Manager (P&IR) to Bhakta Mahendra for his unauthorized absence.

(vi) Ext.- M/2-4 Letter of dt- 19.08.2013 issued by manager of LIC to Bhakta Mahendra regarding his unauthorised absence,

(vii) Ext.—M/3--Letter of dt- 24.09.2013 issued by manager (P&IR) to S.K.Panday, Manager (Estate), Patna for conduct anenquiry regarding absence of Bhakta Mahendra from service.

(viii) Ext.-M/3-1-Report of S.K.Pandey, Manager (Estate) dt- 18.10.2013.

(ix) Ext.- M/4--Application of Bhakta Mahendra of dt-21.10.2013 addressing to Sr. Divisional Manager, LIC Patna Zone for permission to resume his duty.

(x) Ext.—M/4-1--Charge sheet cum show cause notice issued by Sr.Divisional Manager on 20.11.2013 to BhaktaMahendra.

(xi) Ext.- M/4-2--Explanation of Bhakta Mahendra of dt-13.12.2013 to Sr. Divisional Manager, LIC, Patna.

(xii) Ext.-M/4-3--Order of Disciplinary Authority Sr. Divisional Manager passed an order dt- 27.12.2013.

(xiii) Ext.- M/5--Order of Zonal Manager (Appellate Authority) passed on order dt- 17.05.2014.

9. On the other hand workman side examined two witnesses namely W.W-1 (Bhakta Mahendra) and W.W-2 Murari Pd. Besides oral evidence workman side got only one document marked Ext. i.e Ext.-W. Letter given by Bhakta Mahendra to join his service from Monday.

10. M.W-1 is of Sri Arbind Kumar Sinha (CRM) LIC of India, Divisional Office, Bhagalpur. Who stated before this tribunal that Bhakta Mahendra, the workman /petitioner was appointed on probation as Part Time employee for the post of Gardener on 13.01.1992 and he was in habit of remaining absent from duty without prior intimation or sanction of leave by the competent authority. This witness also stated that he was absent from 13.12.2010 however he was already sanctioned 290 days extra ordinary leave (EOL). This facts was communicated by the manager (OS) to Manager (P&IR) , Divisional Office, Patna vide letter dt-14.09.2011 and the same is marked him as Ext.-M/1. This witness also stated that the letters dt- 16.02.2011, 14.09.2011 and 24.04.2014 were sent to the Bhakta Mahendra through speed post intimating him the absence from duty was unauthorised but Bhakta Mahendra neither reported to his duty nor filed any reply and he also did not reply of explanation called for from him vide letters dt- 02.07.2013 and 19.08.2013 and all the letter are proved by this witness i.e marked Ext.- M/2 series. This witness further stated that when the workman did not join his duty, the manager (Estate) Sri S.K.Pandey was asked to conduct an enquiry vide letter dt- 24.09.2013 i.e marked Ext.- M/3. This witness further stated that Mr S.K.Pandey visited to the permanent address of workman Bhakta Mahendra and found him absolutely fine and living a normal life the S.K.Pandey has filed his enquiry report vide letter dt- 18.10.2013 i.e marked as Ext.- M/3-1. This witness also stated that S.K.Pandey in his report mentioned that workman admitted that he received all the official communication made to him and workman gave a written assurance to resume his duty from 21.10.2013. This witness also admitted that the workman requested vide letter dt- 21.10.2013 to allow him to resume duty and gave the cause of his absence due to sickness of wife and children. This witness further stated that a charge sheet cum show cause notice dt-20.11.2013 was issued to the workman for his long absence from 13.12.2010 that attracts the provision of Regulation 39(4)(iii) of the LIC of India (Staff) Regulation,1960. This witness also submitted his reply vide letter dt- 13.12.2013 but

management LIC did not find the reply satisfactory. Then competent authority imposed penalty of "Removal from Service". This witness also proved the request letter dt- 21.10.2013 given by workman, charge sheet of dt- 20.11.2013 and the reply of the workman dt-13.12.2013 and the order of the competent authority dt-27.12.2013 i.e marked as Ext.- M/4 series. This witness further stated that the Chairman and the Appellate Authority also did not find any merit in the appeal and the memorial letter issued by the workman vide dt- 25.03.2014 and 04.01.2016 respectively and both the letters has been not considered by the Chairman and Appellate Authority. This witness also proved the order of Appellate Authority dt-17.05.2014 which is marked as Ext.- M/5. This witness further stated that the workman violated prescribed rules of the corporation by remaining absence from duty about three years and even after receiving letters from the LIC, the workman did not sent any reply that's why workman was found guilty, of misconduct and so the proper penalty has been imposed by the LIC.

In cross-examination, this witness categorically admitted that he was also posted as Administrative office (P&.IR), Patna division office-1 from 2011 to 2016 at and that time Sri Bhakta Mahendra was working in divisional office as part time gardener. This witness also admitted that the workman was not directly related to my department rather he was attached with the service department of LIC. In para-17 of the cross-examination this witness categorically admitted he does not know, the wife of the workman had informed to the LIC Office about the illness of workman due to jaundice. This witness also admits that he does not know whenever the workman went on leave, he used to file leave application. In para-18 of his cross-examination this witness also admits that he does not know, when the LIC generally intimate to his employee about his absence from duly. In para-19 of the cross-examination this witness categorically admitted that before issuance of charge sheet, an officer S.K.Pandey (Sourav Kumar Pandey) visited to the house of workman and he has filed a report dt- 18.10.2013 i.e marked as Ext.- M/3-1. This witness also admits in para-20 of his cross-examination the workman has given an application on 21.10.2013 for resuming his duty but he was not allowed to join. In para-21 of his cross-examination this witness admits that from charge sheet to passing of final order it takes about six months period. In para-24 of his cross-examination, this witness categorically admits that he does not know the workman had come to the office after recovery of illness several times but he was not allowed to join the duty.

This evidence of this witness appears not very concrete and convincing to the claim of management about absence from duty without any information as in cross-examination this witness did not deny that the wife of workman has informed to the LIC about the illness of workman due to jaundice. Also did not deny this facts that the workman after recovery from illness visited his office to resume his duty but he was not allowed to join. This witness also admits that when the enquiry officer S.K.Pandey visited to the house of workman, the workman has given him an assurance letter to resume his duty but he was not allowed. This witness being a senior officer did not disclose why the workman has not been allowed to join duty when he has served a letter of his joining from 21.10.2013 to the enquiry officer. This witness appears to be a formal witness from the management side just to prove the letters and orders as produced by the LIC department as this witness is not fully aware about the affairs of workman.

11. On the other hand workman also examined two witnesses namely W.W-1 Bhakta Mahendra workman himself and W.W.-2 Murari Pd. Besides oral evidence the workman side proved only one document that is assurance letter given to the enquiry officer to join duty on 21.10.2013 i.e marked as Ext.- W.

12. First of all, this tribunal scrutinizes the evidence of Bhakta Mahendra (W.W-1) who deposed before this tribunal on 05.12.2018 on that date he claimed his age 55 years. Who stated before this tribunal that he has joined the service in LIC as a gardener on 14.01.1992. This witness also stated that he has removed from the service in December 2013. This witness further stated that he used to inform orally for his leave and when ever he returns to his service he used to file written application. This witness categorically stated that he did not remain continuously absence from his duty for three years rather he admitted, due to the prolong illness of wife and he was himself suffering from jaundice for a long time and due the death of his daughter of illness are the reasons of his absence from duty. This witness further stated that one officer of LIC came to his house and met him and he has taken a note from him in which he has written he will join the service from 21.10./2013 and as per written commitment he came to office to join duty but he was refused to join his service. This workman also stated that he still wants to serve LIC with commitment and this witness proved his written note given to enquiry officer for the resuming duty i.e marked as Ext.-W.

In cross-examination this witness categorically stated in para-9 he joined the service on 14.01.1992 and when ever he went on leave he used to file leave applications. He categorically admits that he does not know the rule how many days a employee can avail leave without permission. In para-11 this witness categorically stated that LIC office sent letters to him intimating for joining the duty but he received only two letters and two letters were received by his son. He also admits in cross-examination that his wife and his son visited twice to LIC Office with the application of my absence from duty but their prayer and application are not taken by the LIC. In para-12 of the cross-examination, this witness categorically admits that one LIC Officer came to his village and he has given a written note to him about his joining when he came to office to join his duty, he was not allowed. He also admits that he has filed

the reply of charge sheet cum show cause and he had mentioned the reasons of his absence from duty in his reply. In para-16 categorically stated that he approached to manager (OS) for joining his duty thereafter requested to manager (P&IR) for his joining who reported him he will talk to the Sr. Manager for the joining. On scrutinizing the evidence of this workman, it appears that due to prolong illness of his wife and jaundice suffering and death of his daughter, he could not join but at the same time he also admits in cross-examination his wife and son informed to the LIC about his absence from duty but they were not cared by the LIC and his evidence also satisfies this facts that he has given a written note to join the duty on 21.10.2013 i.e marked Ext.-W but he was not allowed to join service but no reason assigned by the management side for not allowing him to join even after getting a written note from workman moreover he has been cross-examined at length by the management side but failed to discard his testimony that could suffice the management claim about continuous absence from duty without any intimation.

13. W.W-2 Murari Pd who also a temporary employee of the LIC. Who stated before this tribunal that he knows the Bhakta Mahendra from the year 1995 who was working as part time gardener in divisional office of LIC. This witness also stated that he came to know that Bhakta Mahendra was on long leave due prolong illness of his daughter and the illness of his wife and due to the death of his daughter. This witness also admitted that some time Bhakta Mahendra was remained absent from the duty without seeking permission. This witness also admitted that this facts, when the Bhakta Mahendra was not able to resume his duty, his son came to LIC Office some times and filed leave application. He also stated that after recovery Bhakta Mahendra came to office to resume his duty but he was not allowed to join. This witness also admitted that Bhakta Mahendra was doing his job as part time gardener four hours per day. This witness also stated that Bhakta Mahendra had filed medical certificate along with joining request letter.

In cross-examination this witness categorially stated in para-5 that he was a temporary caretaker in LIC from 1995 and he was terminated from service in the year 2007 because he has requested to the management to pay minimum wages. This witness also stated in cross-examination that he has filed a writ against the order of the management in the Hon'ble High Court, Patna i.e pending. In para-16 of his cross-examination this witness categorically stated that due to illness of daughter, wife and himself. Bhakta Mahendra was absent most of the time from the year 2010. In para-7 of cross-examination, this witness categorically stated that Bhakta Mahendra had sent the information to LIC about the death of his daughter and illness of his wife but he cannot say exact date. In para-11 this witness categorically stated he does not know about the rule of unauthorised absence and he cannot say how many days a employee can avail leave without leave application. This witness categorically stated in para-12 Bhakta Mahendra has filed an appeal against the order of the LIC. Thus this tribunal finds that this witness was well aware about the facts of Bhakta Mahendra and he has corroborated the version of Bhakta Mahendra here before this tribunal. Moreover, management side could not controvert the evidence of this witness in the course of cross-examination. Even the management did not challenge the evidence of this witness in cross-examination.

14. It is argued from the management side that the workman Bhakta Mahendra is not under the category of workman in relation to the management of LIC and so his case is not maintainable at all. It has been also argued that Bhakta Mahendra has been absent from duty for about three years and even after intimation of unauthorised leave, Bhakta Mahendra neither came to office to resume his duty nor filed any reply to any letter received from the LIC. Management side also stressed on the report of manager (Estate) S.K.Pandey i.e Ext.-M/3-1. Where the enquiry officer reported he has found Bhakta Mahendra absolutely fine living normal life and who had also given written assurance to resume his duty from 21.10.2013. It is also argued that LIC had issued a charge sheet cum show cause notice on 20.11.2013 to the workman and the workman filed his reply on 13.12.2013 but management side did not find proper explanation given by the Bhakta Mahendra and found his continuous absence attracts the provision of regulation 39(4)(iii) of the LIC of India (Staff) jRegulations,1960 and as per this provisions penalty of "Removal from service" has been proposed and letter on it was affirmed by the Disciplinary Authority and Appellate Authority finding no plausible reasons assigned by the Bhakta Mahendra about his absence from the duty. The management side also followed the principle of natural justice giving ample opportunity to Bhakta Mahendra to defend himself. Accordingly the Disciplinary action as taken by management was proper within the rule of LIC. But this tribunal is not convinced to the management contention as placed by the management side. This tribunal finds that Bhakta Mahendra was appointed as a part time gardener i.e well covered under the provision of workman as enshrined in section 2(S) of the Industrial Dispute Act. So claim of the management Bhakta Mahendra was not workman is not acceptable. Further the workman had duly admitted that due to prolong illness of daughter and wife and suffering from jaundice. He has been absent from the duty for long time in the year 2010-11 at the same time workman also claimed he was not absent three years continuously, this admission of the workman is not controvertered by the management side by any cogent evidence as workman himself and W,W-2 Murari Pd the witness from the workman side duly stated in their evidence the wife and son informed to the LIC office twice with written leave application about absence of Bhakta Mahendra but this facts is not controverted by the management side while cross-examining there two witness before this tribunal so there is no force in the contention of management he was absent continuously for three years. Moreover, letters issued by management LIC dt-14.09.2011, (Ext.-M/1) letter dt- 16,02.2011 (Ext.-M/2), are written in English however workman is not a literate person who could understand spirit of the letter. Further the management side stressed over the report of enquiry officer Sri S.K.Pandey who was deputed as a enquiry officer by the LIC vide letter dt-24.09.2013 (Ext.-M/3) in which S.K.Pandey manager (Estate) was authorised to

conduct enquiry by visiting personally at employee's house and to collect the feedback from his neighboures. This tribunal finds that S.K.Pandey, the enquiry officer visited the village house of the Bhakta Mahendra i.e also accepted by the Bhakta Mahendra. The report of S.K.Pandey appears to be contradictory as he stated in his report (Ext.-M/1) he found the employee absolutely fine and living normal life and he also mentioned in report the employee and family member expressed the desire to continue his service. But at the same time he also reported he found out in his persona that the fellow is suffering from a psychological disorder otherwise he is mentally sound and this enquiry officer also reported the employee Bhakta Mahendra also assured to resume his duty on 21.10.2013 for which Bhakta Mahendra has a given note. This tribunal found that this enquiry officer did not comply the direction given by the LIC management as this enquiry officer did not take any statement of employee Bhakta Mahendra and even did not conduct any enquiry of the family member of employee and did not make any query to any neighbors in written from that could suggest whether the employee Bhakta Mahendra was absent intentionally or he was victim of circumstances. This enquiry officer did not conduct the enquiry properly. LIC management relied on only one contradictory findings of enquiry report (Ext.-M/3-1) showing by the enquiry officer he found the employee absolutely fine and living normal life and all the competent authority of LIC drew a inference the employee was deliberately did not join his service. This finding of Disciplinary Authority and Appellate Authority is quite unconvincing and unreliable because enquiry officer has given one side report without conducting a proper enquiry moreover, no LIC officer has taken this statement of enquiry officer i.e the employee Bhakta Mahendra is suffering from the psychological disorder. This factual note of enquiry officer is ignored by all the LIC Officials who passed an abrupt order without proper securitizing of the matter of employee. This tribunal further finds that the management side took plea all the order has been passed within the provision of LIC Staff Regulation, 1960. This tribunal further finds section 2 of his regulation says this regulation shall apply to every whole time (salaried) employee of the corporation unless otherwise provided by the terms of any contract agreement of letter of appointment. From plain reading of this regulation it appears that this rules is applicable to only on whole time employee, however employee Bhakta Mahendra was appointed as a part time gardener and he was not whole time employee. Further the management side did not place the letter of appointment of this employee that could show the appointment of this employee is well covered under the LIC (Staff) regulation 1960. This tribunal also finds that the management side did not give proper opportunity to the employee and did not assign any reason when the enquiry officer reported and the employee assured to resume his duty on 21.10.2013with a proper application but why the management LIC refused his prayer and plea reasons best known to the management. So management side also did not follow the principle of natural justice in true spirit rather with premeditated mind set passed an abrupt wrong order of the removal from service because the management side has given charge sheet cum show cause notice after one months of the letter given by the workman for joining his duty with the proper explanation on 21.10.2013. This tribunal further finds that the workman has duly prayed before the authority of LIC he has served 22 years without getting any adverse remarks from the LIC but his previous service record is not considered by the any authority of LIC at the time of passing order that ought to be considered by the LIC. Moreover, reasons assigned by the disciplinary authority and appellate authority not considering this prayer of workman is very unconvincing and unacceptable.r

15. On scanning all the facts and circumstances of the case and the materials on record as discussed above this tribunal finds that the workman fairly admitted that he was victim of circumstances as due to illness of wife and prolong illness of his minor daughter followed by her death and thereafter the workman was himself suffering from acute jaundice, workman remained absent from his duty in the year 2010-11 at the same time he claimed the management was duly informed by his wife and son twice with the leave applications but they were not entertained by the LIC Office. This tribunal finds that this claim of the workman was not controvertered by the management by any cogent evidence before this tribunal. So charges as leveled against the workman, he was continuously absent for three years without any intimation is not at all proved by the management side. Further this tribunal finds that management relied on the enquiry report (Ext.-M/3-1) placed by the S.K. Pandey who himself gave a contradictory findings in his report about the workman. This tribunal finds that enquiry officer placed the assurance letter given by the workman to resume his duty from 21.10.2013 but when the workman Bhakta Mahendra came to LIC Office to join his duty on 21.10.2013 with reasonable explanation of his absence from duty, he was denied to resume his duty and the management side did not assign any reason for depriving him to join duty moreover, taking the advantage of the illiteracy of the workman, all of sudden management sent a charge sheet cum show cause notice to the workman on 20.11.2013 in English version with proposed punishment of removal from service, it all shows that the role of the management was the beyond the provision of principle of natural justice, so this tribunal finds and hold that denial of LIC of management for not allowing the workman to resume his duty on 21.10.2013 is not legal and justified in any way. Accordingly point no.- (iii) is decided in favour of the workman.

16. From perusal of the entire facts and material available on record, this tribunal finds that the management of LIC wrongly followed the rules of corporation and regulation of LIC of India (Staff) Regulation Act, 1960. As per section-2 of this regulation Act, these rules are applicable to whole time (salaried employee) but here LIC management misinterpreted the rules as the workman Bhakta Mahendra was not whole time gardener of the LIC rather this is admitted facts workman Bhakta Mahendra was doing his job of LIC as part time gardener. So the case of this workman is not covered under the LIC of India (Staff) Regulation,1960. This tribunal further finds that the

management of LIC keeping the workman in dark, when he came to office to join his duty on 21.10.2013, issued a charge sheet cum show cause notice dt-20.11.2013 by Sr. Divisional Manager cum Disciplinary Authority in haste without applying the principle of natural justice and without the applicability of LIC of India Regulation, 1960 in the case of workman. Accordingly this tribunal finds and hold that order of the Disciplinary Authority, Appellate Authority and the order of Chairman are not proper and justified. As all the authorities of LIC did not consider the real facts of the case and passed a whimsical biased order on the basis of improper enquiry report (Ext.-M/3-1) and without proper interpretation of section-2 of LIC of India (Regulation) staff Regulation,1960. This tribunal further finds that workman has been removed from the service vide order dated- 27.12.2013 without giving any notice pay, without compensation i.e clear cut a violation of section 25(F) of the Industrial Dispute Act. As the section-25 (F)of the Industrial Dispute Act dea;s with the **conditions precedent to retrenchment of workman:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-**

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay [for every completed year of continuous service] or any part thereof in excess of six month; and

(c) notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the official gazette].

17. This tribunal finds that workman has served the LIC as part time gardener about 22 years without any adverse remarks but previous service record has been sidelined by the management of LIC and thus violated the section 25 (F) of the I.D.Act and thus the role of the management of LIC of India comes under the purview of unfair labour practice i.e violation of Section 25(T) of the I.D.Act by passing a major punishment against the workman Bhakta Mahendra removal from the service i.e without applying the rules of LIC of India staff regulation 1960 in right perspective and without applying the principle of natural justice and thus the action of the management is LIC of India, Patna terminating the service of workman Bhakta Mahendra ex-part time gardener from 27.12.2013 without following the provision of section 25(F) of the I.D.Act (point no.-iii) is not legal and justified).

18. So keeping the view of the discussions as made above and the findings arrived at on other points this is a considered opinion of this tribunal, the service of the Bhakta Mahendra should be regularized from 21.10.2013 after reinstatement of his service with back salary and with all consequential benefits, accordingly management of LIC of India, Patna is directed to reinstate the workman Bhakta Mahendra to his service from the date 21.10.2013 with back salary and other consequential benefits. If the workman attained the age of superannuation, the management of LIC of India shall pay his full back salary from 21.10.2013 and retiral benefits within the period of two months from date of publication of this award.

This is my award accordingly.

Dictated & Corrected by me.

Sd/- 24.05.2023

MANOJ SHANKAR, Presiding Officer,

नई दिल्ली, 11 जुलाई, 2023

का. आ. 1209.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **दुर्गापुर स्टील प्लांट** के प्रबंधतंत्र के संबद्ध नियोजकों और **हिंदुस्तान स्टील वर्कर्स' यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल, पंचाट (रिफरेन्स न.-08/2016)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था।

[सं. एल -26011/08/2016- आईआर(एम)]

डी.के.हिमांशु, अवर सचिव

New Delhi the 11th July, 2023

S.O. 1209.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 08/2016)** of the **Central Government Industrial Tribunal cum Labour Court, Asansol** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Durgapur Steel Plant** and **Hindustan Steel Workers' Union** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No.L-26011/08/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 08 OF 2016

PARTIES: Hindustan Steel Workers' Union

Vs.

Management of Durgapur Steel Plant

REPRESENTATIVES:

For the Union/Workman: Joint Secretary, Hindustan Steel Workers' Union.

For the Management: Mr. Madhab Banerjee, learned advocate.

INDUSTRY: Iron and Steel.

STATE: West Bengal.

Dated: 07.06.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour, vide its Order **No. L-26011/8/2016-IR(M)** dated 26.04.2016 and Corrigendum dated 27.12.2016 has been pleased to refer the following dispute between the employer, that is the Management of Durgapur Steel Plant and their employees for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the Management in deploying Industrial Employees (governed by Certified Standing Orders) in Computer & Information Technology Department (non-works area) where total jobs are done by Non-Industrial Employees (governed by SAIL CDA Rules, 1977) with discrimination in incentive payment provision of leave, holiday & shift working is justified? If not, what relief such Industrial Employees posted to Computer & Information Technology Department of Durgapur Steel Plant are entitled to.* ***"***

1. On receiving Order **No. L-26011/8/2016-IR(M)** dated 26.04.2016 and Corrigendum dated 27.12.2016 from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 08 of 2016** was registered on 13.05.2016 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Madhab Banerjee, learned Advocate for the Management of Durgapur Steel Plant (DSP) is present. The case is fixed up for appearance and evidence of parties. On repeated call at 12:00 PM none appeared on behalf of the workman. In compliance with order dated 16.12.2022 Notice were issued to the Chief Executive Officer, Durgapur Steel Plant as well as the Joint Secretary, Hindustan Steel Workers' Union (INTUC) under registered post directing them to appear in person or through their authorized representatives. On receiving the notice, the Management of Durgapur Steel Plant appeared through Mr. Banerjee, their advocate but no one turned up for the union for adducing evidence.

3. After registration of this case on 13.05.2016, Hindustan Steel Workers' Union (INTUC) filed a written statement on 20.06.2016 and SAIL/DSP filed their written statement on 14.06.2017. A rejoinder was filed by the union on 04.07.2017. However, the union representative has not turned up for adducing evidence in support of their case nor did they seek for any accommodation. Due to such default on the part of Hindustan Steel Workers' Union, at whose instance this Industrial Dispute has been raised, I am constrained to dismiss the reference case.

Hence,

ORDERED

that the Reference case is dismissed. An award be drawn up in the light of the above finding. Let copies of the Award in duplicate be communicated to the Ministry of Labour and Employment, Government of India for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer,

नई दिल्ली, 11 जुलाई, 2023

का. आ. 1210.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **विशाखापट्नम स्टील प्लांट, ऊक्कुनागरम, विशाखापट्नम** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री के. सत्य राव, पेदगन्त्यादा (एम), विशाखापट्नम** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-97/2013)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था।

[सं. एल -29012/36/2013- आईआर(एम)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1210.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 97/2013)** of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Visakhapatnam Steel Plant, Ukkunagaram, Visakhapatnam** and **Shri K. Satya Rao, Pedagantyada(M), Visakhapatnam** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No. L-29012/36/2013-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT, HYDERABAD

Present: **Sri IRFAN QAMAR,** Presiding Officer

Dated the 23rd day of June, 2023

INDUSTRIAL DISPUTE No. 97/2013

Between:

Sri K. Satya Rao,

Ex-Technician, SP

D.No.154-1-100, Jalaripallipalem(V)

Gangavarm(P.O.), Pedagantyada (M),

Visakhapatnam – 530 044. …...Petitioner

AND

The Director(Personnel)

Visakhapatnam Steel Plant,

Rashtriya Ispat Nigam Ltd.,

Ukkunagaram,

Visakhapatnam – 530 003. ….Respondent

Appearances:

For the Petitioner : M/s. M. Sivananda Kumar & T. Balaswami, Advocates

For the Respondent : M/s. V. Ravinder Rao & Satoor Narayana Goud, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/36/2013-IR(M) dated 1.10.2013 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the demand of Sh. K. Satya Rao (Employee No.117113), Ex-Technician for reinstatement of his services by the Management of Visakhapatnam Steel Plant, RINL, is legal and justified? What relief the workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 97/2013 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The workman filed his claim statement with the averments in brief as follows**:

It is submitted that in the year 2002, 1st charge sheet was issued to the Petitioner for un-authorized of absence of 84 days and the Petitioner was punished with a censure on 5.11.2002. It is submitted that again the Petitioner was absent for 96 days and he was punished with a reduction in basic pay by one stage for a period of one year with cumulative effect on 18.10.2003. Then, Petitioner was given a punishment of reduction in basic pay by two stages for a period of one year with cumulative effect on 17.6.2004 for unauthorized absence of 88 days. It is submitted that thereafter, a charge sheet was issued to the Petitioner for unauthorized absence of 102 days and a punishment of reduction in basic pay by 4 stages for a period of one year with cumulative effect on 24.6.2005 was given to the Petitioner. It is submitted that another charge sheet was issued to the Petitioner for unauthorized absence of 119 days and he was punished with reduction to lower grade in Time Scale from S4 to S3 on 29.8.2006. Finally, another charge sheet was issued to the Petitioner for unauthorized absence of 165 days and as a measure of punishment, he was removed from service on 10.9.2009 vide Order No. WK/ES & F/l17113/D 1050 of the 2nd respondent. It is submitted that during the interregnum period of charge sheet and removal of service, Petitioner was also issued a charge sheet on the allegation of theft of Company property and no enquiry was conducted as he was already removed from service. It is submitted that the Petitioner is a physically handicapped person. He was appointed as a Trainee in the respondent Steel Plant on l6.3.1992. His services were regularized on 16.9.1994. In the cadre of Technician, he discharged his duties to the utmost satisfaction of his superiors, undeterred for 10 years. The Petitioner was appointed in the quota of displaced persons. It is submitted that the Petitioner is the only son and the burden of looking after his parents, wife and 7 children is solely depends on him alone. The Petitioner lost his land and house under the land acquisition for the purpose of Steel Plant. It is submitted that during the year 2002, the mother of Petitioner, who is aged about 75 years, slipped down while descending the steps. Due to old aged, she sustained serious injuries and being the only son, the task of treating his mother laid on the Petitioner's shoulder. The same was informed to the authorities and inspite of his request, the authorities, without sanctioning leave, erroneously marked absent and issued a charge sheet. There was no proper inquiry and without appreciating the facts of the case, the punishment of It is submitted that during the year 2003, while Petitioner's mother was undergoing treatment, Petitioner was met with an accident when he was travelling in an auto. This incident was also informed to the authorities and prayed for granting of leave. The authorities, without considering the same, marked the Petitioner as absent and issued another charge sheet and passed an order of punishment without application of the facts of the case. Likewise, series of charge sheets were issued without considering the explanation of the Petitioner and without conducting inquiry under proper lines, Petitioner was subjected to punishment. The Petitioner is not worldly wise and he has not been given proper opportunities to defend his case during the inquiries conducted against him and the family background of the Petitioner and his responsibilities were not taken into consideration while passing the order of removal. It is submitted that the Petitioner was alleged to have been removed from service vide Order Ref. WK/ES&Fy/1 17113/D-1050, dated 10.09.2009 of the 2nd respondent on the ground of unauthorized absence for a period of 165 days. This case is a fit case to take lenient view in pursuance of the facts and circumstances and deserves to be treated as a special case for the following among other grounds which are to be urged at the time of arguments/hearing. The punishing authority has erred in assessing the case while passing the order of removal and further referred to a case where no inquiry has been conducted. The punishing authority is at liberty to file a criminal case, though the employee has been removed, in the event of theft had taken place, but the same was not done and it shows that the allegations in the charge sheets are also false and willfully subjected the Petitioner to harassment. While passing the order of removal, which is a major punishment, the Petitioner was not called for any enquiry and

the punishment of removal was passed by the authority behind his back. Since the order of removal is a serious punishment, he must be given opportunity to defend his case without reference to the past records and the authority shall confine only to the present issues because the Petitioner was punished either wrongly or rightly for the previous mis- conduct. In the instant case, the punishing authority referred to the previous cases to justify his action of passing the order of removal, which is illegal and arbitrary. The punishing authority, before passing the major punishment of removal from service, shall consider various aspects, particularly the principles of natural justice were complied with or not. In the instant case, Petitioner was removed from service on the findings of the Inquiry officer which are one sided and biased. The serious error is that the charge sheeted Petitioner was not called for enquiry and his version was completely denied by not giving opportunity and such inquiry itself is vitiated. Therefore, the order of removal assed on the basis of the one sided inquiry also shall be set aside, as it has no force. It is, therefore, prayed to set aside the Order No. WK/ES & F/117113/D-1050, dated 10.9.2009 issued by the 2nd respondent and consequently pass an order for reinstatement of the Claimant forthwith and pass such other order or orders as this Court deems fit and proper in the interest of justice.

3. The Respondents filed counter denying the averments made in the claim petition, with the averments in brief which runs as follows:

It is submitted that the undisputed conduct of the Petitioner over the years while in service reflects his total disregard towards discharge of duties. It is submitted that the unauthorized absence of workman, every year ever since 2002 has resulted in series of punishment orders ultimately culminating in removal from service. A perusal of the orders pursuant to disciplinary inquiry, year after year clearly shows that the management having taken liberal attitude towards the petitioner had to increase the effect of punishment during subsequent years only to ensure that the petitioner would amend his ways and inculcate discipline in service. Having been in service since 1994 the petitioner has developed the habit of being unauthorizedly absent since the year 2002 and had faced disciplinary inquiries, which ultimately resulted in removal from service. Besides disciplinary inquiry and the punishment orders the petitioner was also served warning letters on a number of occasions and appropriate entries were made in the annual confidential reports. All these steps were taken only as preventive and corrective actions by the management but ultimately the extreme step of removal from service was inevitable. It is submitted that in all the inquiries conducted adequate and due opportunity was afforded to the petitioner before passing the appropriate order of punishment. The respondent organization being manufacturing unit involved in the production of steel and the petitioner being a technician entrusted with the task of discharging his functions in the line of production was expected to be regular in his duties, any unauthorized absence would have an adverse effect of dislocating the process of supervision in the production chain. Hence, unauthorized absence of such an employee considering the nature of functions to be discharged has to be viewed seriously. However, taking a lenient view punishment orders of smaller magnitude were passed in the earlier stages of indiscipline by the petitioner. There is no justification nor any legally tenable ground to question the order of removal in the face of his misconduct over the years. Though the petitioner has not chosen to plead in detail about the nature of inquiry conducted on previous disciplinary inquiries and the punishment orders passed therein, it may be stated that the petitioner was afforded adequate opportunity and only on being fully satisfied that he had no valid or just explanation to offer for unauthorized absence the appropriate order of punishment was passed. It is submitted that against the charge of committing theft of company property a charge sheet dated 29.06.2007 was issued and an opportunity was given to the petitioner to submit an explanation. The petitioner failed to submit any explanation to the charge. An inquiry committee was duly constituted and after following the due process and inquiry report dated 29.08.2007 was submitted. A copy of the inquiry report was made available to the petitioner before passing the disciplinary order. The disciplinary order dated 10.09.2009 is in fact a common one both for the charge of unauthorized absence for a period of 165 days as shown in the charge sheet dated 7/9.04.2007 and also the charge of committing theft of company property. The disciplinary authority has considered the inquiry reports in the case of both the charges and having considered the gravity of misconduct passed an order of removal from service. In the punishment order before arriving at the nature and extent of punishment be imposed, the disciplinary authority thought it appropriate to examine the past conduct of the petitioner to see whether there are any mitigating circumstances to take a lenient view against the petitioner. In that context the disciplinary authority had referred to previous misconduct and the disciplinary orders passed against the petitioner. These factors/aspects have however not weighed with the disciplinary authority in passing the order of removal from service. It is submitted that the petitioner has narrated about his alleged problems by claiming to be a physically handicapped person, displaced person and also the alleged ailment of his mother. None of these facts can constitute a basis to condone or ignore the continuous unauthorized absence over the years. It is not the case of the petitioner that the afore stated explanation offered was placed on record or substantiated by appropriate evidence during the course of any of the disciplinary inquiries. Hence, the above-stated pleas cannot be countenanced. These averments are made only with a view to gain. It is false to allege that series of charges were issued without considering the explanation of the petitioner and punishment orders are passed without conducting proper inquiry. The petitioner was offered due opportunity during the course of inquiry and on certain occasions he failed to submit any explanation. Being an educated person it is not open for the petitioner to state that he is not worldly wise. Considering the conduct of the petitioner and the nature of the duties he is expected to perform in the manufacturing process it cannot be said that unauthorized absence and also the charge of theft which are established after due inquiry, warrant any lenient view. Hence the plea is untenable and

misconceived. It is not correct to contend that the disciplinary authority while passing the order of removal has referred to a case where no inquiry has been conducted. Merely because a criminal case is not booked against the petitioner does not mean that the allegation of theft cannot be inquired into or that the charge is not established during the course of disciplinary inquiry. It is false to allege that the charge of theft was made willfully to harass the petitioner. The petitioner was given a copy of the inquiry report and was asked to submit his explanation before the disciplinary authority passed the order of punishment. The petitioner has not chosen to avail the opportunity. The procedures as contemplated in the regulations formulated by the company are strictly adhered to before passing the order of punishment. The punishment order makes it clear that the disciplinary authority has referred to the past records/conduct of the petitioner only to verify whether there are any mitigating circumstances in order to take a lenient view against the petitioner. The past conduct of the petitioner has not weighed with the disciplinary authority in imposing the order of punishment. The petitioner has not chosen to substantiate the allegation relating to violation of principles of natural justice at any stage of the disciplinary inquiry and also the basis to contend that his version was completely denied before passing the punishment order. The standard orders of the company do not contemplate any separate inquiry in the case imposing major punishment. It is not the case of the petitioner that the procedures contemplated in the service regulations applicable to the petitioner are not strictly adhere to. For all the reasons stated above it is prayed that the petitioner has not made out any case warranting interference with the order passed by the disciplinary authority against the serious misconduct of the petitioner which is duly established by conducting an appropriate inquiry. Hence the petition be dismissed with costs.

5. Heard arguments of both parties under Sec.11A of the Act. Perused the record.

6. **On the basis of pleadigs of both the parties, the following points emerge for determination:**

I. Whether the domestic enquiry conducted by the Respondent is legal and valid?

II. Whether the action of the Management in dismissing the Petitioner workman from service vide order WK/ES&Fdy/117113/D-1050, dated 10.9.2009 is liable to be set aside as per plea taken by the Petitioner in the claim?

III. Whether Petitioner is entitled for reinstatement in the service as he claimed in the petition?

IV. To what relief the workman is entitled?

7. **Point No.I**: The validity of domestic enquiry has been held legal and valid vide order dated 21.4.2021 hence, it got finality.

Thus, Point No.I is answered accordingly.

8. **Points No.II & III**: It is admitted by the workman that he was unauthorizedly absent from duty during the relevant period as mentioned in the charge sheet dated 7/9.4.2007, issued against him. Moreover, in the enquiry proceeding held on 31.5.2007 when the Enquiry Officer asked the charge sheeted employee whether he accepts the charges on his own, then, the charge sheeted employee confirmed that he is accepting the charges on his own and without pressure of anybody. Further the Presiding Officer has produced attendance details of charge sheeted employee in the enquiry proceeding. The Petitioner has submitted that the punishing authority has not considered various aspects particularly principles of natural justice while passing the impugned order. Since the validity of domestic enquiry has been held legal and valid vide order dated 21.4.2017 by the Tribunal, and issue of following principles of natural justice has already been dealt in the said order. Therefore, this plea of the workman is not acceptable.

9. Regarding his unauthorized absence from duty in the relevant period as alleged in charge sheet the workman has taken the plea in his claim statement that during the year 2002 his mother aged 75 years, slipped down while descending the steps and due to old age she sustained serious injuries. The workman being only son had the responsibility for treating his mother. This was informed to the authorities but inspite of his request the authorities without sanctioning leave erroneously marked absence and issued charge sheet. Further, it is submitted that there was no proper enquiry and without appreciating the facts of the case, the punishment off 'Censure' was passed against him. Further he has taken the plea that during the year 2003 the Petitioner's mother was undergoing treatment and the Petitioner met with an accident while he was travelling in an auto, this incident was also informed to the authority and prayed for granting him leave, but the authority without considering the same marked the Petitioner absent and issued another charge sheet and passed order of punishment without application of the facts of his case.

10. On the other hand, the Respondent has submitted that the Petitioner was afforded adequate opportunity of hearing during the enquiry. But he had no valid or just explanation to offer for unauthorized absence from duty.

11. It is to be noted that in the present claim statement, Petitioner has challenged the impugned order No. WK/ES&Fdy/117113/D-1050, dated 10.9.2009 passed by Respondent whereby he was dismissed from service. Therefore, the order challenged in the present matter was passed by Disciplinary Authority on the basis of charge sheet No.WK/ES&FDY/117113/ CS.6/488 dated 7/9.4.2007 for his misconduct of habitual absence from duty, in

violation of CL No. 27.46 of CSO of the company, violation of CL.No.22.2 read with CL.No.27.65 of CSO of the Company, and also violation of CL.No.22.4 read with 27.65 of CSO of the company. The aforesaid plea of mother's illness does not pertain to the period for which impugned order of punishment/ dismissal order has been passed. The charge sheet dated 7/9.4.2007 itself reveals that he was charge sheeted for the unauthorized absence from duty for the period in the year 2007, 2008 and 2009 and he was held guilty for unauthorized absence. Therefore, Disciplinary Authority proceeded to pass punishment order dated 10.9.2009 by dismissing the Petitioner from the service from the unauthorized absence of the Petitioner from duty. Therefore, the afore said plea taken by the workman is of no help to the Petitioner's claim ag the order under challenge.

12. Further, in para 15 of the claim statement Petitioner has admitted that he was removed from service vide order dated 10.9.2009 on the ground of unauthorized absence for a period of 165 days and his case is a fit case to take lenient view in pursuance of the facts and circumstances of the matter on the ground that the punishing authority has erred. From the perusal of the removal order it depicts that the Disciplinary Authority has passed the reasoned order while taking into account the previous Annual Confidential Records of the Petitioner for the years, viz., 2002, 2003, 2004, 2005, 2006 and he had been punished on several occasions for the unauthorized absence from duty as mentioned in the punishment order at para No.3.0, points No.1,2,3,4,5 and 6. But the Petitioner failed to furnish plausible and satisfactory explanation for his unauthorized absence from duty in the relevant period as mentioned in the charge sheet dated 7/9.4.2007. Moreover, he has accepted the allegation stated in the charge sheet during enquiry. Therefore, he was rightly found guilty of misconduct of unauthorized absence from duty in contravention of the CSO 27.46 and 27.65. Further, it would be pertinent to have a reference of the decision of Hon'ble Apex Court in the case of In **the case of M.L. Singla Vs. Punjab National Bank, Civil Appeal No.1841 decided on 20.9.2010 wherein Hon'ble Apex Court have held:-**

"*once it is held that domestic inquiry is legal and proper the next question which arises for consideration is as to whether the punishment imposed on petitioner is just and legal or it is disproportionate to the gravity of the charges."*

13. In view of the above, from the perusal of the record and submission made by the parties concerned, it is undisputed that the charges levelled against the workman held proved in the domestic enquiry. Since habitual unauthorized absenteeism from duty of the workman and from place of work in contravention of the company's Standing Orders. Therefore, it can not possibly argued that charges against the Petitioner were simple in nature. So far as charges are concerned, he was found absent for total number of 165 days, during the period of years 2007, 2008 and 2009 and he was also found guilty of committing theft in the company premises of the company's property in contravention to CSO No.27.65 and he was found guilty. Therefore, in view of the charges held proved against the Petitioner. In such circumstances no employer would ever allow or tolerate such behavior of his employees while on duty. The employer had therefore, every right to initiate domestic enquiry against such employee for such reprehensive conduct and behavior. Moreover on earlier occasions also during 2002 to 2005, he was held guilty of unauthorized absence from duty, and for that he was awarded minor punishments of "Censure", Reduction of basic pay by two stages for a period of one year with cumulative effect, Reduction of basic pay by four stages for a period of one year with cumulative effect and Reduction to lower grade respectively. However, he was extended number of opportunities by the company to reform and improve his conduct. But he did not avail those opportunities to reform his conduct and behavior. Therefore, finally for the charges of unauthorized absence in the years 2007, 2008 and 2009 he was held guilty in the enquiry and after considering all facts and circumstances, the Disciplinary Authority was under compelling situation passed the order of removal from service to the workman.

14. In this context, the Respondent counsel has contended that against the charge of committing theft of company property a charge sheet dated 29.06.2007 was issued and an opportunity was given to the petitioner to submit an explanation, but the petitioner failed to submit any explanation to the charge. An inquiry committee was duly constituted and after following the due process and inquiry report dated 29.08.2007 was submitted. A copy of the inquiry report was made available to the petitioner before passing the disciplinary order. The disciplinary authority vide order dated 10.09.2009 is in fact a common one for both for the charge of unauthorized absence for a period of 165 days as shown in the charge sheet dated 7/9.04.2007 and also for the charge of committing theft of company property. Further, it is submitted that the disciplinary authority has considered the inquiry reports in the case of both the charges and having considered the gravity of misconduct passed an order of removal from service. In the punishment order before arriving at the nature and extent of punishment be imposed, the disciplinary authority thought it appropriate to examine the past conduct of the petitioner to see whether there are any mitigating circumstances to take a lenient view against the petitioner. In that context the disciplinary authority had referred to previous misconduct and the disciplinary orders passed against the petitioner. These factors/aspects have however not weighed with the disciplinary authority in passing the order of removal from service. It is contended that merely because a criminal case is not booked against the petitioner does not mean that the allegation of theft cannot be inquired into or that the charge is not established during the course of disciplinary inquiry. It is false to allege that the charge of theft was made willfully to harass the petitioner. The petitioner was given a copy of the inquiry report and was asked to submit his explanation before the disciplinary authority passed the order of punishment. The petitioner has not chosen to avail the opportunity. It is further submitted that the procedures as contemplated in the regulations formulated by the company are strictly adhered to before passing the order of punishment. The punishment order makes it clear that the disciplinary authority has referred to the past records/conduct of the petitioner only to verify whether there are

any mitigating circumstances in order to take a lenient view against the petitioner. The past conduct of the petitioner has not weighed with the disciplinary authority in imposing the order of punishment. The petitioner has not chosen to substantiate the allegation relating to violation of principles of natural justice at any stage of the disciplinary inquiry and also the basis to contend that his version was completely denied before passing the punishment order. It is further contended that the standard orders of the company do not contemplate any separate inquiry in the case imposing major punishment. It is not the case of the petitioner that the procedures contemplated in the service regulations applicable to the petitioner are not strictly adhere to. Hence the petition be dismissed.

15. In view of the submissions made by the Respondent, the Petitioner was found guilty under clause 27.65 of Standing Orders wherein it is mentioned that, **"Any act which constitutes violation of any of these Standing Orders."** Therefore, Petitioner was rightly found guilty by the Enquiry Officer of the charge levelled against him and by the Disciplinary Authority while passing the punishment order of removal from the service against the workman has considered all the aspects and circumstances of the case of workman. In these circumstances, the Respondent Management was left with no option except to pass the punishment order of removal from service of the Petitioner. More over, the Petitioner was not able to make out any ground for taking a lenient view in granting lesser punishment of removal to him.

16. The Respondent Management has made a reference of the decision of the Hon'ble Apex Court in **New India Assurance Co. Ltd vs Vipin Behari Lal Srivastava decided on 21st February, 2008 in Civil Appeal 5213 of 2006 wherien Hon'ble Apex Court have held:-**

"12. As noted above, sick leave can be granted only on the production of a medical certificate from a registered medical practitioner clearly stating as far as possible the diagnosis and probable duration of treatment. There was no such indication in the certificates purported to have been furnished by the Respondent. It is to be noted that the Respondent even did not join after receipt of the letter dated 3.8.1994. The charges against the Respondent, inter alia, were as follows:

(i) willful insubordination and disobedience of lawful and reasonable orders of his superiors,

(ii) absence without leave, without sufficient grounds or proper or satisfactory explanation,

(iii) absence from his appointed place of work without permission or sufficient cause.'

13. In Viveka Nand Sethi v. J & K Bank Ltd., this Court, inter alia, observed as follows:

"14. What fell for consideration before the Industrial Tribunal was the interpretation and/or applicability of the said settlement. The Industrial Tribunal committed an error of record insofar as it proceeded on the basis that the said settlement had not been proved. The settlement being an admitted document should have been considered in its proper perspective by the Industrial Tribunal. Clause (2) of the said settlement is a complete code by itself. It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties. A bare perusal of the said settlement clearly shows that it is for the employee concerned to submit a proper application for leave. It is not in dispute that after the period of leave came to an end in June 1983, the workman did not report back for duties. He also did not submit any application for grant of further leave on medical ground or otherwise. It is in that situation the memorandum dated 2-11-1983 was issued and he was asked to join his duties. I is furthermore not in dispute that despite receipt of the said memorandum, the workman did not join duties pursuant whereto he was served with a notice to show cause dated 31-12-1983. He was required to resume his duties by 15-1-1984. The Bank received a telegram on 17-1-1984 and only about a month thereafter he filed an application for grant of leave on medical ground. It is not the case of the workman that any leave on medical ground or otherwise was due to him. Opportunities after opportunities indisputably had been granted to the workman to explain his position but he chose not to do so except filing applications for grant of medical leave and that too without annexing proper medical certificates.

Further, Hon'ble High Court off Judicature, Andhra Pradesh at Hyderabad in the case of D. Nageswara Rao Vs. Guntur District Milk Producers Co-operative Union Limited, Vadlamudi , decided in 2001(5) ALT 347 (D.B.), the Hon'ble High Court have held:-

"12. This takes us to the contention regarding the disproportionality of the punishment imposed on the petitioner. The misconduct committed by the petitioner cannot be taken lightly. It is pertinent to notice that despite the fact that the management indulged in granting leave liberally to the petitioner for months together and despite several reminders to the petitioner to return to duty in the interests of administration, the petitioner refused to obey the directions of the employer with impunity, and went on availing unauthorised leave. As pointed out supra, though the petitioner took the plea that he was ill, being inflicted by influenza, enteric fever and typhoid, he did not produce any medical certificate to support that he was actually ill. Unauthorised absence, that too for a long period, subjecting the public interest to peril, cannot be treated as a minor lapse on the part of the delinquent employee. Be that as it may, it is well settled that the High Court, in exercising power of judicial review under Article 226, cannot sit as an appellate authority and

interfere with the disciplinary action taken by the authorities lightly and reduce or modify the quantum of punishment imposed by the disciplinary authority, unless, in a given case, the penalty so imposed shocks the conscience of the Court. This is not one such case. Therefore, we do not find any weighty or substantive ground to interfere with the quantum of punishment also."

Therefore, in view of the fore gone discussion and law discussed as above, the order of dismissal passed against the Petitioner by Respondent authority can not be faulted with nor it can be said to be in any way disproportionate to the gravity of charges. The punishment of dismissal of the workman was proportionate to the charges, hence, deserves to be upheld. Therefore, in view of the discussion in fore gone paragraphs and the law laid down by the Hon'ble Apex Court, I am of the considered opinion that the action of the Respondent Management in terminating the services of the Petitioner was legal and justified and hence, the Petitioner is not entitled for the relief of reinstatement into service.

Thus, Points No.II & III is answered accordingly.

ORDER

In the result, the reference is answered as under:-

The demand of Sh. K. Satya Rao (Employee No.117113), Ex-Technician for reinstatement of his services by the Management of Visakhapatnam Steel Plant, RINL, is neither legal nor justified. As such, the order of termination No. WK/ES & F/l17113/D 1050 dated 10.9.2009 passed by Respondent is held legal and valid. Hence, Petitioner is not entitled to any relief, as such the claim of the Petitioner is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 23rd day of June, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 जुलाई, 2023

का. आ. 1211.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **हिन्दुस्तान ऑयल कॉर्पोरेशन लिमिटेड, लखनऊ** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अमित पांडेय पुत्र श्री बलराम पांडेय, बाराबंकी** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ, पंचाट (रिफरेन्स न.-07/2020)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था।

[सं. जेड -16025/04/2023- आईआर(एम)-52]
डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1211.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 07/2020** of the **Central Government Industrial Tribunal cum**

Labour Court, Lucknow as shown in the Annexure, in the Industrial dispute between the employers in relation to **Hindustan Oil Corporation Limited, Lucknow** and **Shri Amit Pandey S/o Shri Balram Pandey, Barabanki** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No. Z-16025/04/2023-IR(M)-52]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 07/2020

Ref. No. K-10/1-4/2019-IR, Dt.21.01.2020

Amit Pandey V/s Hindustan Oil Corporation Ltd.

BETWEEN

Sri Amit Pandey S/o Sri Balram Pandey 2/129, Avas Vikas Colony, Barabanki-225001

AND

Chief General Manager Hindustan Oil Corporation Ltd. TV 13, V.V. Vibhuti Khand. Gomti Nagar, Lucknow.

AWARD

By Letter No. K-10/1-4/2019-IR dated 21.01.2020 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section10 the Industrial Dispute Act, 1947 (14 of 1947) by the Central Government, with following schedule:-

"*Whether the termination of the service of Sri Shyam Kumar S/o Sri Krisha Avtar, who was engaged in Roja Depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, Contractor of FCI, for the period 08.08.2008 to 23.04.2010 is proper and justified".*

If not, to what relief, the workman is entitled to?"

Accordingly on 22.10.2020 an industrial dispute No. 43/2020, registered before this Tribunal.

From the perusal of record, the position which emerge out is that in spite of several opportunities granted to the claiamnt/workman, he has not filed statement of claim.

Lastly on 27.03.2023 an order was passed quoted herein below.

"Matter taken up in revise list.

None for claimant.

Sri Sharad Kumar Shukla for respondent.

List on 18.05.2023 for ex-parte

hearing at Campt, Nainital".

Sri Dhirendra Singh learned counsel for the F.C.I. argued that in spite of several opportunities, no claim has been filed by claimant till date as such, keeping in view of the order dated 17.01.2023 the matter be dismissed.

Finding & conclusion:-

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 03.09.2020.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of V.K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:-

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief".

In the case of M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 208 (118) FLR 1164 Hon'ble Allahabad High Court has held as under:-

"The law has been settled by the Apex Court in case of Shankar Chakravarti V. Britannia Biscuit Co. Ltd. V.K. Raj Industries V. Labour Court and Ors., Airtech Private Limited Vs. State of U.P. and Ors, 1984 (49) FLR 38 and Meritech India Ltd. V. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a partly is on the party making the allegation. The test would be, who would fail if no evidence is led".

And by the Hon'ble Allahabad High Court in the case of District Administrative Committee, U.P. P.A.C.C.S.C. Services Vs. Secretary-cum G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519; wherein it has been held as under:-

"*The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed".*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and, and the workman is not entitled for any relief.

Award as above.

Lucknow JUSTICE ANIL KUMAR, Presiding Officer

05.06.2023

नई दिल्ली, 11 जुलाई, 2023

का. आ. 1212.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **राष्ट्रीय इस्पात निगम लिमिटेड, ऊक्कुनागरम, विशाखापट्नम** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री एम. रामचंद्र राजू, पाकिरीथककीआ पोस्ट, विशाखापट्नम** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.-61/2010)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.07.2023 को प्राप्त हुआ था

[सं. जेड -16025/04/2023- आईआर(एम)-54]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th July, 2023

S.O. 1212.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 61/2010)** of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Rastriya Ispat Nigam Limited, Ukkunagaram, Visakhapatnam** and **Shri M. Ramachandra Raju, Pakirithakkia Post, Visakhapatnam** which was received along with soft copy of the award by the Central Government on 11.07.2023.

[No. Z-16025/04/2023-IR(M)-54]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 6th day of July, 2023

INDUSTRIAL DISPUTE L.C.No. 61/2010

Between:

Sri M. Ramachandra Raju,

S/o Late M. Appala Raju,

Laxmipuram, Vadlapudi HR Colony,

Pakirithakkia Post,

Visakhapatnam – 530 001. .....Petitioner

AND

The Chairman cum Managing Director,

The Rastriya Ispat Nigam Limited,

Ukku Nagaram,

Visakhapatnam – 530 001. ….Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate

For the Respondent: M/s. K. Sarvabhouma Rao & Sharath Chandupatla, Advocates

AWARD

Sri M. Ramachandra Raju, who worked as Junior Technician (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents Rastriya Ispat Nigam Limited seeking for declaring the proceeding dated 24.12.1992 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner is a land looser. The Visakhapatnam Steel Plant had acquired his house and site. He was given a Rehabilitation Card No. 256, for the purpose of providing employment/alternative house site etc., paying meager compensation. The Visakhapatnam Steel Plant had undertaken the responsibility of accommodating the land loosers by providing employment on the basis of Rehabilitation Cards. The Petitioner was accordingly appointed as Assistant Technician Trainee under the rehabilitation quota on 05-02-1988. The petitioner completed his in service training satisfactorily and was appointed as Junior Technician on regular basis and was on probation for a period of one year w.e.f. 03-11-1989 and posted in the Traffic Department by the Respondent. The Petitioner had completed the probation period of one year satisfactorily and was discharging his duties to the entire satisfaction. While so, the petitioner suffered from serious illness due to which he was compelled to proceed on leave, even without pay. The petitioner further submits that due to his illness and loss of pay put the petitioner to physical, mental and financial problems resulting in prolonged leave etc,. In support of sickness the petitioner submitted Medical Certificate on 09-09-1992 and thereby he was taken on duty on 05-10-1992 only to terminate his services w.e.f. 24.12.1992. Prior to the termination, the petitioner was charge sheeted, domestic enquiry was conducted. The enquiry officer failed to give any opportunity inspite of repeated oral and written requests of the Petitioner. No opportunity was given to explain the reasons for his unauthorized absence. It is submitted that based on the exparte enquiry report Petitioner's services were terminated. All the representations, petitions and Appeals have been rejected, upholding termination order dated 24.12.1992. The petitioner has therefore filed Writ Petition No. 8489 of 1995 before the Hon'ble High Court of A.P. at Hyderabad. While disposing the W.P. No. 8489 of 1995 the Hon'ble High Court at Hyderabad had directed the Respondent Management to consider the case of the Petitioner. Instead of considering his case sympathetically, the Respondent Management rejected the Petitioner's case vide letter dated 21.1.1998. It is submitted that the petitioner was not given reasonable opportunity to explain his case before the enquiry officer. Hence the enquiry conducted by the Respondent is illegal, without jurisdiction, against the provisions of law and also against the principles of natural justice. The punishment of termination from service is disproportionate to the misconduct committed by the petitioner in terms of Sec. 11A of the I.D.Act, 1947. The Respondent has violated several provisions of the certified Standing Orders such as clause 30, 28 and 2l etc.. Therefore, it is prayed to declare the termination order dated 24-12-1992 arbitrary, illegal, against the provisions of law and also principles of natural against the justice and direct the Respondent to reinstate the petitioner with full back wages, continuity of service attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

Being a land looser the petitioner had the benefit of rehabilitation scheme introduced by the State Government besides the compensation determined by the Land Acquisition Authorities. Being a displaced person petitioner was issued a Rehabilitation Card by the State Government to enable him to participate in the selection process for any vacancy in the non-executive cadre notified by the respondent organization. Accordingly, the petitioner being selected as trainee joined the respondent organization on 05.02.88. On completion of training he was appointed as Junior Technician operation w.e.f., 03.11.89. While in service the petitioner was in the habit of being unauthorizedly absent without prior application or sanction of leave. He used to request for sanction of leave after joining on the false pretext of health problems. Such conduct warranted adverse entries in his confidential character reports (CCRs) ever since the

first year of his joining the service. All the entries in CCRs during the years 90-91, 91-92 are made after being duly informed of the same. He was also duly warned about his adverse conduct and advised not to repeat the same by communications dated 17.12.90, 1st January, 1991, 9th March, 1991 and April, 1991. Since the petitioner continued to adopt the misconduct of being unauthorizedly absent inspite of warnings and adverse entries in CCRs, a charge sheet dated 13.06.91 was issued on the ground of habitual and willful absence from duty for a period from 25.02.91 to 13.06.91. The petitioner submitted an explanation to the charge sheet on 24.06.91. Since the explanation was not satisfactory, after affording reasonable opportunity as per the service regulations the disciplinary authority imposed a minor punishment of censure by order dated 26.7.91. Subsequently a 2nd charge sheet dated 8/9.10.91 had to be issued for willful and habitual absence, since the petitioner has not changed his conduct inspite of warnings and earlier disciplinary proceedings. The charge memo was issued with reference to Standing Orders CI 22.2 r/w Cl 27.65 for being unauthorisedly absent from 05.08.91 to 09.10.91. Since the explanation dated 23.10.91 submitted by the petitioner was not satisfactory, an Enquiry was conducted by affording reasonable opportunity, and thereafter punishment of censure awarded to him, by order dated 26.07.91. Inspite of service of notice the petitioner did not participate in the enquiry proceedings, thereby compelling conduct of proceedings ex-parte. The enquiry officer submitted a report on 16.07.92. In the meanwhile on account of his unauthorized absence during the subsequent period i.e from 10.10.91 to 10.11.9l and from 09.1.92 to 13.05.92 another charge sheet dated 13.05.92 was issued invoking the same provisions of standing orders. In response the petitioner submitted an explanation on 26.05.92 which was not satisfactory. Accordingly an enquiry committee was constituted. During the course of this enquiry petitioner appeared before enquiry officer on 08.09.92 and voluntarily accepted the charges. Thereafter the petitioner reported to duty on 09.09.92. On account of his repeated excuses of ill health as an alleged cause for being unauthorisedly absent. He was referred to Chief Medical Officer Visakha Steel And General Hospital on 03.10.92 for a medical opinion, which established that the alleged health problems are only false excuses. After receipt of medical report petitioner attended to duty for one month from 05.10.92, and once again abstained from 04.11.92. In terms of the two enquires referred to above final orders of removal of the petitioner from service were passed on 24.12.92. The removal order was passed after conducting due enquiry and affording adequate opportunity in both the enquires. After the appeal and review petitions were rejected by the competent authorities on consideration of relevant material, the petitioner approached Hon'ble Court of AP by filing WP. No. 8489/95. The Hon'ble High Court disposed the said writ petition by order dated 16.10.97. Pursuant to the said order of the Hon'ble High Court petitioner submitted representations seeking re-appointment. The competent authority in the respondent orginsation having carefully re-considered the matter in the context of previous conduct of the petitioner and the interest of orginsation which is a continuous process industry which cannot afford any break or disruption in the process for want of manpower thought it not desirable to re-employ the petitioner and petitioner was informed of the same. Thereupon the petitioner once again approached the Hon'ble High Court by filing WP. No. 25176/02. The Hon'ble High Court by order dated 20.12.02 was pleased to dismiss the said writ petition. The petitioner has suppressed most of the above referred facts and the repeated litigious processes indulged in during the past 18 years after the services are terminated in the year 1992. Hence the application is liable to be dismissed in limini.

4. The perusal of the record reveals that the domestic enquiry conducted by the Respondents in this case is held as not valid vide order dated 8.3.2016. The Respondent is directed produce evidence to prove his case.

5. Heard the Petitioner. Both parties submitted their written arguments u/s 11A of the Industrial Disputes Act, 1947.

6. On the basis of the rival pleadings of both parties and written submissions, the following points emerge for determination:-

I. Whether the termination of the petitioner from service by the Respondent vide order dated 24.12.1992 is illegal, arbitrary and against the provisions of law and liable to be set aside?

II. Whether the claim of the petitioner is barred by principle of Res- judicata?

III. To what relief is the petitioner entitled?

FINDINGS:-

7. Points No.I & II: Petitioner has claimed that he has worked as Technician for more than 4 years to the entire satisfaction of his superiors in the Respondent office. The Petitioner suffered serious illness in the year 1992 and due to which he was on leave, even without pay. On submission of medical certificate he was taken on duty on 5.10.1992 only to terminate his services w.e.f. 24.12.1992. It is also submitted that before issuing the termination order, the Petitioner was issued with a charge sheet and domestic enquiry was conducted ex-parte without giving any opportunity to explain the reasons for his absence. Based on ex-parte enquiry report, Petitioner's services were terminated on 24.12.1992. It is also submitted that this Tribunal vide order dated 8.3.2016 has held the domestic enquiry as not valid and Respondents were accorded opportunity to produce the evidence to prove their case. But the Respondent failed to produce any evidence in support of their contention and case was posted for arguments. It is therefore prayed by the Petitioner that, since the domestic enquiry was held not valid and Respondent failed to

produce any evidence to prove their case, Petitioner be reinstated into service with full back wages, continuity of service as prayed in his claim statement.

8. On the other hand, Respondent counsel has submitted that it is not the case of the Petitioner at any stage that he has suffered any prejudice on account of improper conduct of enquiry or any lack of opportunity. It is not case of the Petitioner that the disciplinary proceedings suffer from any statutory violation or contrary to the provisions of Certified Standing Orders and hence it is submitted that enquiry conducted on both the occasions was legally valid. This constituted the basis of passing the removal order and does not suffer from any impropriety or illegality. It is also submitted that in case of similar nature an employee being unauthorizedly absent on several occasions and for long duration were considered by the Hon'ble High Court of Andhra Pradesh and also the Hon'ble Supreme Court, wherein it is held that a punishment of removal for unauthorized absence is not disproportionate and also does not shock the conscience of the court. Hence, in the facts and circumstances of this case the Respondent is justified in removing the Petitioner from service. The counsel for Respondent in support of his contention has relied upon the decisions reported in 2008(1) SCC 224, 2008(3) SCC 446, 2001(5) ALT 347, 2002 (3) ALD 220.

9. The Respondent's counsel has also submitted a memo wherein he has mentioned that the validity of domestic enquiry was decided by the Tribunal vide order 8.3.2016 thereby domestic enquiry was held not legal. Challenging the said order of the Tribunal, Respondent has filed WP No.31585/2017 in the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court has been pleased to allow the Writ Petition of Respondent vide order dated 30.1.2023 by setting aside the Tribunal's order dated 8.3.2016. It is submitted that while disposing of the Writ Petition, Hon'ble High Court also directed to pay lumpsum of Rs.2 lakhs to the Petitioner. Therefore, in the light of the order in WP No.31585/2017, the present matter become infructuous and nothing stays alive for adjudication by this Tribunal. Therefore, prayed for disposal of the matter being infructuous.

10. In view of the submissions made by both the parties, perused the record.

11. In the present matter, this Tribunal vide order dated 8.3.2016 has held domestic enquiry not valid and the said order has been challenged by the Respondent in WP No.31585/2017 in the Hon'ble High Court of Andhra Pradesh. The said writ petition has been disposed of by the Hon'ble High Court vide order dated 30.1.2023. The perusal of the order of the Hon'ble High Court reveals that the Respondent challenging the order dated 8.3.2016 passed by this court, has filed writ petition to quash the order dated 8.3.2016 regarding validity of domestic enquiry passed in LC No.61/2010 holding as illegal and barred by principle of Res-judicata, without application of mind and was made without adverting to all the earlier litigations before Hon'ble Court in several writ petitions by the applicant earlier, which have been dismissed on merits. In this writ petition Hon'ble High Court was pleased to pass the order dated 30.1.2023 quoted as below:

*"**13. From the above, it is clear that the doctrine of res judicata is applicable to industrial adjudication also. When the dispute raised about termination of services of temporary workman by way of writ petition, was disposed of by reasoned order, on merits, and after contested hearing, and after that order becomes final, re- agitation of same issue before Labour Court is barred by res judicata. In the case on hand also, The 1st respondent herein filed W.P. No.8489 of 1995 before the High Court of Andhra Pradesh at Hyderabad and the said Writ Petition was disposed of by an order dated 16.10.1997 inter alia with a direction to consider the case of the petitioner sympathetically. Pursuant to the said order, the management has once again examined the matter and confirmed the order of removal. the petitioner herein made another representation dated 11.03.2002 and the said representation was considered and rejected. Aggrieved by the said rejection order, the 1st respondent herein filed W.P. No.25176 of 2002 before the High Court of Andhra Pradesh at Hyderabad. The said Writ Petition was dismissed by an Order dated 20.12.2002, observing that the Writ Petitioner is not entitled for consideration of his representation for reemployment which request was already considered and rejected in 1997.*

14. On enunciating the law, the present Writ Petition is liable to be dismissed on the ground of laches as well as applying principles of res-judicata.

15. Accordingly, the Writ Petition is dismissed and the I.D. No.61 of 2010 order dated 08.03.2016 is hereby set aside. However, no costs.

16. This court, with a sympathetic view and considering the poor condition of the employee /1st respondent, who is the land looser, is inclined to direct the writ petitioner herein to pay some amount not less than one lakh rupees to the 1st respondent herein within a period of two months from the date of the receipt of the order."

Therefore, in view of the decision of the Hon'ble High Court in WP No.31585/2017, the present claim petition of the Petitioner is barred by principle of Res-judicata.

Thus, Points No.I & II are answered accordingly.

12. **Point No. III:** In view of findings given at Points No.I & II, Petitioner is not entitled to get any relief, in this claim. Hence, claim petition is liable to be dismissed.

Thus, Point No. III is answered accordingly.

ORDER

In the result, the petition is dismissed as barred by principle of Res-judicata.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 6th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1213.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल **बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (44/2016) प्रकाशित करती है।

[सं. एल-39025/01/2023-आई आर (बी-II)-23]

सलोनी, उप निदेशक

New Delhi, the 19th July,2023

S.O. 1213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.44/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023-IR(B-II)-23]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL, CHENNAI

ID No. 44/2016

Present: **DIPTI MOHAPATRA, LL.M.**
PRESIDING OFFICER
Date: 04.07.2023

Sh. V. Subramaniyan,
No. 15, Ram Nagar,
3rd Cross Street, Karumandapam,
Trichy – 620 001. : Petitioner

AND

1. The Branch Manager,
   Punjab National Bank,
   Trichy Main Branch,
   Trichy – 620 001. : First Respondent
2. The Deputy General Manager,
   Punjab National Bank
   Circle Office (HRD)
   Khandha Enclave
   179, Sarojini Street
   Ramnagar
   Coimbatore-641009 : Second Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s S. Arunachalam & Associates

For the 1st & 2nd Respondent : Advocate, Sri S. Jayaraman

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant Sh. V. Subramaniyan raises the dispute challenging the denial of his job as Courier / Peon by the First Respondent Bank since 30.06.2015.

The case of the Applicant in brief is that he was appointed as Part-Time Sweeper in the First Respondent Bank on 26.11.2005 with salary/wage at the rate of Rs. 150/- per day. He has studied up to 10th standard. He was all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon. He was sponsored by the Employment Exchange, Trichy. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job but on the other hand despite of his continuance in job for 9 years, 7 months and 4 days, the Applicant was denied the job on 30.06.2015 without prior intimation. Since the Applicant has rendered unblemished service for the said period, preference should have been given by the Respondent to him for filling up the permanent vacancies pursuant to Bipartite Settlement dtd.19.10.1996. Besides he has completed his continuous service of 480 days preceding to the date of denial/termination thus is eligible for regularization under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1961. It is further contended that when some vacancies arose the Applicant made oral and written Representations to place him on permanent post. The 1st Respondent sent the Representation with his recommendation to the Appropriate Authority, the 2nd Respondent for consideration. The Representation was never considered by the Second Respondent, on the other hand resorted to direct recruitment of subordinate cadre posts for filling of 80 posts in Trichy Circle vide advertisement on dtd 03.12.2014 in Tamil Daily i.e. "Thanthi". The denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section-2(oo) of ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of him. He raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of his reinstatement in service with back wages and all other attendant benefits and regularization of his service from the date of his appointment

3. Both the Respondents entered appearance by filing Common Counter traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a "Workman" within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent's Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1984 reached by the All India PNB Employees Federation and the Bank, and the same settlement was circulated vide Circular No. 772 dtd. 17.05.1984. This settlement clearly speaks about the procedures stated therein to be followed unless the Thikana system is prevailed in the particular area. The said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said PD circular, the Bank had issued another PAD Circular No. 72 dtd.11.02.2012 which also provides for Rules regarding the eligibility for posting of Part-Time Sweepers in various branches. It is further contended that no right exists for any person to claim regularization / absorption in Bank which dehors the Bank's Rules and Guidelines. The applicability of Tamil Nadu Industrial Establishment (Conferment of permanent status to workmen) Act at 1961 was challenged in view of ID Act. The

Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed by any of the Respondent on 01.02.2005 or terminated from service on 03.07.2015. There was no Service Agreement in between the Bank and the Petitioner. The claim of the Applicant is not sustainable in the eye of law. The Petitioner / Applicant is not entitled to any relief as sought for.

4. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, V.Subramaniayan while examined himself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 19 documents marked as Ext.W1 to Ext.W19. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and produced 6 documents marked as Ext.M1 to Ext.M6.

The following issues emerge in the pleadings of the parties:

(I) If the Applicant is a Workman within the purview of 2(s) of the ID Act.

(II) Whether there exists relationship of Employer-Employee in between the Respondent and the Petitioner.

(III) Whether the Applicant was terminated without prior notice?

(IV) To what relief the Applicant / Petitioner is entitled to?

Issues (i) & (ii)

5. Since tjhe Issues I & II are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner states to have joined the Respondent Bank on 26.11.2005 as Part-Time Sweeper (PTS) and all along doing the menial work such as Sweeping, Cleaning and File Stitching and Clearing Cheques, etc. at par with the job profile of a Messenger or a Peon. The initial remuneration was paid to him on daily basis at the rate of Rs 150/-. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Petitioner despite of his service of 9 years 7 months and 4 days. The Applicant was denied the job on 30.06.2015 without prior intimation. In view of the Bipartite settlement dtd. 19.10.1996, the Applicant is entitled to get the preference to fill up the permanent vacancy when completes 5 years of service. His representation in this regard was never considered. WW2 viz. Shri Shankaravaduvelu, one retired Clerk of Respondent's Bank now holds the post of the General Secretary of "Punjab National Employees Union" which is affiliated to "All India Bank Employees Association" adduces evidence in support of the Petitioner. He categorically states to have rendered 25 years of service in the Respondent Bank till his superannuation in the year 2019. He has direct knowledge that since the engagement of the Petitioner dtd. 26.11.2005 as Temporary Employee as PTS in the Respondent's Bank, his service was utilized for whole day. The Petitioner was not only doing the menial work such as Sweeping, Cleaning, File Stitching and Clearing Cheques etc., as good as the job of a Permanent Employee. But the Applicant was never been paid wages / remuneration at par with a Permanent Employee.

6. The Respondent on the other hand adduces evidence through the Manager (HR), Mitra Teja who denies the pleadings of the Petitioner and the statement of both the Witnesses. In support of the contentions made in Counter Statement, it is stated that the Petitioner cannot plead to project himself as a "Workman" within the purview of Section-2(s) of the Industrial Disputes Act, as much as he was engaged of and on whenever exigencies arose on the part of the local Branch Manager who lacks any authority to give appointment to anyone. The Applicant on the other hand has been adequately paid for his service rendered for the Branch. There exists no Employer-Employee relationship in between the Respondents and the Petitioner. The claim of the Petitioner amounts to "backdoor entry" thus the claim for reinstatement with back wages is not sustainable. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record.

7. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record. In view of the discussion held in preceding paragraphs with regard to the pleadings of the parties, it is to be seen if the Petitioner is a "Workman" within the purview of the Act and if there exists any Employer-Employee relationship in between the Petitioner and the Respondent. In this context the documents filed by the Petitioner are taken into consideration. The documents are half hazard filed. Even though the Petitioner Claims to have joined the Bank on 26.11.2005, no document in its support is filed. It reveals that Ext.W1 is nothing but Character Certificate in favour of the Petitioner owing to good character and performance issued by the Manager of Vayalur Road Branch, PNB on dtd. 04.11.2008. Ext.W2 is the Representation of the Petitioner on dtd. 25.06.2011 (in Tamil) addressing Dy. General Manager to place him on the Permanent Post. Ext.W3 is the forwarding letter wherein the Senior Manager forwarded the Application dtd. 25.06.2011 of the Petitioner to the Chief Manager (HRD), Trichy Circle to post him on the vacancy arising on the transfer of one Mr. Subbaiah. The Petitioner though produced some documents under the caption "Voucher being handled by the Petitioner" do not convince the relevancy to the pleadings of the Petitioner. Out of those Ext.W4 dtd. 04.02.2012 though legible does not whisper the purpose for which the voucher is raised and how it is connected to the Petitioner. Ext.W5 and Ext.W6 are absolutely not legible and not accepted as document. Ext.W7 is the Bio-Data dtd. 24.01.2014. Ext.W8 is the Circular dtd. 31.05.2017 issued by the Head Office for recruitment of Workman Staff (other than Godown Keeper). Ext.W17 is the same document. The Memorandum for

Absorption dtd. 22.02.2014 is marked as Ext.W9. The General Secretary sent a proposal for conversion of Part-Time Employees as Peon to AIPNBEF vide Ext.W10 on dtd. 24.02.2014. Ext.W11 dtd. 12.02.2015 is Circular regarding absorption of PTS. Ext.W12 is the letter of General Secretary to AIPNBEF regarding the Educational Qualification. Letter from General Secretary to Employees to provide details vide Ext.W13 dtd. 27.05.2015. Ext.W14 dtd. 01.07.2015 is the Special Recruitment Drive. Ext.W18 & W19 are the extracts of 8th and 9th Bipartite Settlements. Ext.W15 is the Representation dtd. 07.02.2016 to the Divisional Manager to consider him to post in permanent post.

8. In view of the discussion held supra, when the engagement of the Petitioner stands disputed, being challenged by the Respondent, onus of proof lies on the Petitioner. It is pertinent to mention even though the petitioner produced a number of documents, none of those support the case of the Petitioner. It is found that the Petitioner seriously failed to produce a single scrap of document with regard to her engagement on 26.11.2005 At the cost of repetition, it needs mention that the none of the documents under Ext.W1 to Ext.W3 and Ext.W4 , Ext.W15 and Ext16 can be accepted as those do not substantiate the claim of the Petitioner regarding his engagement or continuity of his job in Respondent's Bank. It reveals that the then Branch Manager has simply forwarded the applications of the Petitioner to the higher authority to consider him to fill up the vacancy post of PTS vide Ext.W3. It does not disclose that the Petitioner was ever engaged on 26.11 2005. Ext.W15 and Ex.W16 (same) representations (in Tamil) of the Petitioner addressed to the Manager and the Dy. Manager on 07.02.2016 to consider his case for filling up the post of part time sweeper. No document has been produced if his applications were ever considered by the Competent Authority. Even if for the sake of argument advanced by the Counsel for the Petitioner is accepted, the Petitioner on several occasions submitted applications and representations as per the above exhibits, such mere fact would not suffice to hold that she was engaged by the Competent Authority. It needs mention that no such correspondence was made to her by the Respondent's Bank in this regard. Besides, while the petitioner claimed to have rendered service for the Respondent's Bank, fails to file a single scrap of document, showing disbursement of any amount towards his remuneration or wage, was ever made by the Respondent. The Petitioner failed to produce any duty assignment chart as claims to have worked other than the her work of a Sweeper. On the other hand, the pleadings and submissions of the Respondent is accepted that the Branch Manager as and when requires hands, engages the local person and the adequate remuneration is being paid to them. In the given fact and circumstance, even if for a while it is accepted that this Petitioner has purchased some Adhesive Stamps as per the Exhibits, she must have been adequately paid. Besides, the Petitioner miserably failed to prove with regard to his claim of continuity of her service from the date of his joining from 20.08.2001 till 30.06.2015. In this context, the Learned Counsel for the Respondent relies on the judicial verdict of the **High Court of Judicature of Madras** in the case of ***Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No.23017/2019 dtd. 06.10.2020*** .It is held by their Lordships that "*in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence stating that she was terminated from job without prior notice".*

9. Accordingly, in view of the facts discussed above, it is held that at any stretch of prevailed circumstance, the Petitioner cannot claim to have been engaged as Part-Time Sweeper by the 1st and 2nd Respondent. Thus, the Petitioner cannot be defined as a Workman under the 2(s) of the ID Act and also there exists no Employer-Employee relationship in between the Respondent and Petitioner.

The Issues (i) & (ii) are answered against the Petitioner.

Issues (iii) & (iv)

10. In view of the findings under Issue No. (i) and (ii) above, there needs no discussion on the Issues (iii) and (iv).

The Issues (iii) & (iv) are answered in negative.

The Petitioner is accordingly is not entitled to any relief as sought.

The ID case stands dismissed.

The Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 04.07.2023)

I.D.No.44/2016

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Smt. V. Subramaniyan
	:	WW2, Sri L. Sankaravadivelu
For the 2nd Party/Management	:	MW1, Sri Mitra Teja

Documents Marked:-

On the petitioners side

Ex.No.	Date	Description
Ext.W1	04.11.2008	Certificate of good performance given to V. Subramanian
Ext.W2	25.06.2011	Representation from V. Subramanian
Ext.W3	25.06.2011	Transfer of posting of Subbaiah, PTS
Ext.W4	04.02.2012	Voucher being handled by V. Subramanian
Ext.W5	15.05.2013	Voucher being handled by V. Subramanian
Ext.W6	15.05.2013	Voucher being handled by V. Subramanian
Ext.W7	24.01.2014	Bio-Data of V. Subramanian enclosed alongwith the Application
Ext.W8	31.05.2017	Regulation regarding absorption of PTS
Ext.W9	22.02.2014	Memorandum for absorption
Ext.W10	24.02.2014	Conversion of PTS as Peons
Ext.W11	04.03.2014	Circular regarding absorption of PTS
Ext.W12	12.02.2015	Educational Qualification to Peon
Ext.W13	27.05.2015	Letter from General Secretary from the Union
Ext.W14	01.07.2015	Special Recruitment trivet of Peon
Ext.W15	07.02.2016	Demand of Employment after termination to the Branch Manager by V. Subramanian
Ext.W16	07.02.2016	Demand of Employment after termination to the General Manager by V. Subramanian
Ext.W17	31.05.2017	Circular from the General Secretary of the Employees Federation
Ext.W18	-	Relevant portion of 8th Bipartite Settlement
Ext.W19	-	Relevant portion of 9th Bipartite Settlement

On the Respondent's side

Ex.No.	Date	Description
Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and appointment
Ex.M2	11.02.2012	Circular issued by the Respondent Bank
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the Bank
Ex.M4	21.09.2015	Circular issued by the bank with regard to the Recruitment and appointment of Part-Time Sweeper
Ex.M5	04.07.2016	Circular issued by the Bank with regard to Alternate mechanism in lieu of interview for recruitment of full Time/Part Time Sweeper
Ex.M6	28.11.2018	Circular No.430 Banning the Temporary Appointment in the Bank.

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1214.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सचिव, तंबाकू बोर्ड, गुंटूर; क्षेत्रीय प्रबंधक, तम्बाकू बोर्ड, गुंटूर,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री विक्रम सीतम्मा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद पंचाट(संदर्भ संख्या 249/2014) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.07.2023 को प्राप्त हुआ था।

[सं. एल -42012/144/2014-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 19th July, 2023

S.O. 1214.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 249/2014) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, Tobacco Board, Guntur ; The Regional Manager, Tobacco Board, Guntur, and Shri Vikram Seethamma, Worker,** which was received along with soft copy of the award by the Central Government on 12.07.2023.

[No. L-42012/144/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri IRFAN QAMAR, Presiding Officer

Dated the 6th day of July, 2023

INDUSTRIAL DISPUTE No. 249/2014

Between:

Vikram Seethamma,
W/o Late Bhushaiah,
R/o Turpupalem, Regulavari Bazar,
Medarmetla (PO),
Prakasham District-523 105. .. Petitioner

And

1. The Secretary,
   Tobacco Board,
   G.T.Road, Guntur-522004.
2. Regional Manager,
   Tobacco Board,
   G.T.Road, Guntur-522004. .. Respondents

Appearances:

For the Petitioner : Sri Y. Ranjeeth Reddy, Advocate

For the Respondent: M/s. J.V. Prasad & K. Ajay Kumar, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L--42012/144/20 14-IR (DU) dated 02.12.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management Tobacco Board and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Tobacco Board, Medarmetla of Ongole District, Andhra Pradesh in terminating the services of Smt.V. Seethamma, Full Time Sweeper, w.e.f. August, 2013 is legal and

justified? If not, what relief the workman is entitled to? "

The reference is numbered in this Tribunal as I.D. No.249/2014 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

It is submitted that the petitioner was appointed as Daily Wage Sweeper in the year 1990 at Tobacco Board, Medarmetla on payment of Rs.20/- per day and worked continuously without any break, to the entire satisfaction of superior officers. There were no complaints of against the petitioner in her entire service. It is submitted that the respondent did not issue any appointment letter and pay slip to the petitioner during her service and petitioner used to sign on the vouchers at the time of taking salary and not extended any benefits like provident fund and ESI, etc.. It is submitted that the petitioner made an application to the respondents to increase the wages on par with other state Government / Central Government and the Auction Superintendent, Medarmetla, addressed a letter dated 19.11.2004 to 1st respondent to entrust the works of Group -D by enhancing her present wages from Rs.600/- to 1260/ per month and accordingly 1st respondent accorded permission vide letter dated 09.12.2004 for utilizing the petitioners services from part time Sweeper to full time sweeper on consolidated wages of Rs.1260/- per month. It is submitted that the respondents further enhanced the wages vide office order dated 30.12.2011 from Rs.3600 to 5354/- per month in the year 2011 w.e.f.01 .04.2011 and accordingly petitioner received the arrears of wages from Respondents. While so, the respondents terminated the petitioner from service w.e.f. August,2013, without conducting any enquiry, notice pay, compensation is arbitrary, illegal, unjust and contrary to the provisions of Industrial Disputes Act. It is submitted that the petitioner gave a representation dated 10.10.2013 to the respondents requesting for reinstatement, but there is no response from the respondents. It is submitted that the petitioner gave representation dated 30.12.2013 to the Assistant Labour Commissioner (Central), Vijayawada, requesting to intervene the matter and to direct the respondents to reinstate the petitioner in to service. The Assistant Labour Commissioner (Central), Vijayawada issued notices to the respondents for joint meetings / conciliation proceedings and the respondents refused to reinstate the petitioner in to service. After several meetings the Assistant Labour Commissioner (Central), Vijayawada closed conciliation meetings and sent the failure report to the Government of India. It is submitted' that the action of the respondent by terminating the petitioner from service w.e.f. August, 2013 is illegal and unjustified. The termination is violation of the Sec 25 E, G and H of the Industrial Disputes Act. The respondent neither gave any notice nor any retrenchment compensation to the petitioner at the time of termination. Number of her juniors awarded with temporary status scheme of 1993, are still working. The action of the respondent in terminating the petitioner and continuing the juniors is illegal and arbitrary. The last drawn salary of the petitioner was Rs.5,354/- per month. It is submitted that the petitioner never asked for regularization. It is further submitted that entire family is depending on the petitioner's income and after termination of the petitioner, they are facing untold problems and hardship. The petitioner is the only bread earner in the family. It is submitted that the petitioner is unemployed and in spite of best efforts made, he is unable to secure any alternative employment till today. The Government of India sanctioned 140 posts of MTS to Tobacco Board and out of the 140 posts of MTS 44 posts are vacant as on 31.03.2014. Therefore prayed to pass an Award directing the respondents to reinstate the petitioner into service with continuity of service, with full back wages and with all other attendant benefits.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

It is submitted that the Tobacco Board is formed in the year 1975 by an Act of Parliament with an object to regulate the production and marketing of FCV tobacco and work for the development of tobacco industries and welfare of the tobacco farmers. The Tobacco Board is a Government body constituted under a separate statute to undertake statutory function of development and growth of tobacco. The Board is not a profit making organization and was established for the welfare of the tobacco growers. The Board is governed by the rules and regulations prescribed by the Central Government. It is therefore submitted that the respondent-Board is neither an "industry" as defined u/s. 2 (j) of the Industrial Disputes Act nor the petitioner is a workman as defined u/s. 2(s) of the Industrial Disputes Act, 1947. It is therefore submitted that the above case is not maintainable either in law or on facts. It is submitted that as the petitioner was working as part-time Sweeper from 1998 on the payment of wages of Rs.600/- per month, but not from the year 1990 as stated by the petitioner. At the request of the Auction Superintendent, Medarametla vide his letter dated 19/11/2004 regarding enhancement of wages and utilizing the services of part-time Sweeper as full-time sweeper, the Head Office, Guntur has considered the proposal of Auction Superintendent and accorded permission to utilize the services of part-time Sweeper as full-time Sweeper on payment of Rs. 1260/- per month. Later Board enhanced her wages along with other workers. The petitioner's last drawn payment was Rs.5,354/- per month. It is submitted that since the petitioner was engaged as daily wage sweeper on temporary basis no appointment orders were issued. The Board did not give any assurance for her continuance in the Board. The petitioner's wages are being paid through voucher. It is pertinent to mention here that the petitioner filed a Petition before the Controlling Authority under the Payment of Gratuity Act, 1972 on 10-07-2014. As per the Notice No. 33/32/2014-E2, dated 13.10.2015 issued by Controlling Authority under the Payment of Gratuity Act., 1972 & Asst. Labour Commissioner (Central), Vijayawada as calculated by Asst. Labour Commissioner(Central), Vijayawada, Board had paid Gratuity of Rs.59,496/- to Smt. V. Seethamma, Ex-daily wage Sweeper, Vellampall1-II Office on 17.11.2015. She acknowledged

the receipt of the same. It is submitted that consequent on closure of one of the branches called as Auction Platform, Keesara, Krishna District, the existing regular staff of Keesara were transferred to other platforms where the vacancies are available. The regular sweeper Smt. K. Lurthamma was transferred from Keesara to Vellampalli-II, she reported for duty on 25.9.2013. Therefore, the services of Smt. V. Seethamma were withdrawn w.e.f. 18/10/2013. It is further submitted that the Head Office reviewed the workload of daily wagers in all the offices of the Respondent-Board including the office of Tobacco Board at Vellampalli-II and decided to withdraw the services of daily wagers where the regular staff are posted. As such, the petitioner was informed not to attend duties from 18.10.2013 as the regular joined the duties. It is submitted that the Respondent-Board has not given any assurance for her continuance in the Board. Therefore, the petitioner has no right to claim for continuance in the Board. The Board can not engage daily wage persons without having sufficient work load. It is submitted that the as per the Government of India, Department of Personnel & Training (DOPT), Office Memorandum No.51016/2/90-Estt.(C), dated 10.9.1993 the casual labourers who are in employment on the date of issue of the Office Memorandum and who have rendered continuous services at least for one year and they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 day week) were given temporary status. As the petitioner was working from 1998 onwards, she cannot be conferred with temporary status as provided under the scheme. The petitioner herself stated in her representations dated 25.5.2001 that she had been working from December, 1998. Therefore, the contention of the petitioner that her juniors are working on temporary status is absolutely false. It is submitted that out of the 140 MTS posts sanctioned by the Government 30 years back 96 are working as on 31/03/2014. The Board has recruitment regulations for all the posts including the post of MTS (erstwhile Group-D Peon/ Watchman/Sweepers etc.). Further, the required qualification for the post of MTS is 10 Class or its equivalent. As such, the Chairman/Executive Director/Secretary/or any other officer of the Board has no power to provide employment on regular basis without following the procedure of Recruitment Regulations framed by the Government of India. Therefore, the petitioner is not entitled for the relief sought in the above case, and is liable to be dismissed with costs. It is therefore, prayed that this Hon'ble Court may be pleased to dismiss the above case with costs, in the interest of justice.

4. Petitioner got examined herself as WW1 and marked photocopies of eight documents which were marked as Ex.W1 to W8. Ex.W1 is the representation to the Chairman, Tobacco Board, Guntur; Ex.W2 is the letter issued to R1 by the Auction Superintendent dated 19.11.2004; Ex.W3 is reply to Ex.W2; Ex.W4 is the office order dated 30.12.2001; Ex.W5 is the representation to the Respondent dt. 1010.2013; Ex.W6 is the representation to ALC(C) dt. 30.12.2014; Ex.W7 is the minutes of conciliation and Ex.W8 is the failure report by ALC(C), Vijayawada. Respondent also examined Sri K. Satyanarayana, as MW1 on behalf of the Management.

5. Counsel for Petitioner filed written arguments and no oral arguments submitted by both parties.

6. **On the basis of pleadings of both the parties, following points emerge for determination**:-

I. Whether action of the Respondent by terminating the Petitioner Smt. V. Seethamma from service w.e.f. august, 2013 is in contravention of the provision of Sec.25F, G, H of the I.D. Act, 1947?

II. Whether the Petitioner is entitled for temporary status under the scheme as alleged in the claim statement?

III. To what relief the Petitioner is entitled?

FINDINGS :-

7. **Point No.I**: Petitioner claims that she was appointed as Daily Wage Sweeper in the year 1990 at Tobacco Board, Medarmetla on payment of Rs.20/- per day and worked continuously without any break, to the entire satisfaction of superior officers. There were no complaints of against the petitioner in her entire service. It is also claimed that the respondent did not issue any appointment letter and pay slip to the Petitioner during her service and petitioner used to sign on the vouchers at the time of taking salary and not extended any benefits like provident fund and ESI, etc.. It is also submitted that the petitioner's wages were enhanced vide office order dated 30.12.2011 from Rs.3600/- to 5354/- per month in the year 2011 w.e.f. 01.04.2011 and accordingly petitioner received the arrears of wages from Respondents. But the respondents terminated the petitioner from service w.e.f. August,2013, without conducting any enquiry, notice pay, compensation is arbitrary, illegal, unjust and contrary to the provisions of Industrial Disputes Act.

8. On the other hand, the Respondent has contended that petitioner was engaged as daily wage Sweeper on temporary basis and no appointment order was issued to her. Her wages were paid through voucher. It is also contended that on closure of one of the branches called as Auction Platform, Keesara, Krishna District, the existing regular staff of Keesara were transferred to other platforms where the vacancies were available. The regular sweeper Smt. K. Lurthamma was transferred from Keesara to Vellampalli-II, she reported for duty on 25.9.2013. Therefore, the services of Smt. V. Seethamma were withdrawn w.e.f. 18/10/2013. It is also contended that the Head Office reviewed the workload of daily wagers in all the offices of the Respondent-Board including the office of Tobacco Board at Vellampalli-II and decided to withdraw the services of daily wagers where the regular staff are posted. As

such, the petitioner was informed not to attend duties from 18.10.2013 as the regular joined the duties. Respondent denies each of material allegations made therein and Petitioner is put to strict proof of the same.

9. In support of her claim Petitioner has filed affidavit of chief examination wherein she has reiterated the plea taken in the claim statement. In support of her claim Petitioner has submitted the photocopies of documents viz., Ex.W1 is an application to increase the wages as per the governed rules, Ex.W2 is the order regarding enhancement of wages from Rs.600/- to s.1260/- per month. Further Ex.W3 is letter dated 9.12.2004 addressed to Auction Superintendent, Tobacco Board, wherein the permission was accorded permission to utilize the services of part-time sweeper as full-time sweeper on consolidated wages. Further Ex.W4 is an office order regarding enhancement of daily wages. Ex.W5 is copy of representation moved by the Petitioner and Ex.W6 is copy of order of the ALC(C) wherein a request to intervene in the matter regarding the services of the Petitioner was made. Further Petitioner has examined herself as WW1 and in cross examination WW1 has admitted that as per Ex.W1 she joined in the service of Respondent as a daily wage sweeper in the year 1998. She has denied the suggestion that, "it is not true to suggest that Respondent Board has appointed daily wagers as and when required."

10. On the other hand Respondent has examined MW1, who has supported the contentions made in the counter.

11. Thus, from the oral and documentary evidence adduced by the Petitioner as well as Respondent, it is established that the Petitioner was engaged by the Respondent as a daily wage sweeper in the year 1998 and her appointment was made subject to exigencies of work arise in the office of the Respondent in case of shortage of staff, or regular employees are on leave. Since the exigencies of the work in the Respondent office could not arise due to surplus staff. Therefore, there was no work available for the Petitioner. Hence, the Respondent disengaged the Petitioner from the service of daily wager w.e.f. August, 2013. As far as the protection of provision Sec.25F, from retrenchment is concerned, the initial burden of proof lies upon the Petitioner to prove that her retrenchment from the service was done in contravention of the Sec.25F read with Sec.25B.

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

12. As regards the question of burden of proof to prove mandatory condition of 240 days of continuous service in 12 months in a calendar year just preceding from the date of termination is concern, Hon'ble Apex court has laid down principle in number of decisions as follows:

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

In the case of Mohan Lal vs. Management, BEL 1981 SCC P. 225, Hon'ble Apex Court held, *"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL also laid down the principle that how to count 240 days of service within one year and held: *"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

In the case of Mohan Lal Vs. Management of BEL, Hon'ble Apex Court have held the principle that how to calculate and determine the number of 240 days of continuous service of workman as required u/s 25F and 25B of Industrial Disputes Act, 1947." As per law laid down by the Apex Court, "*continuous 240 days of service for a period of one year should be counted backward and just preceding the relevant date being the date of retrenchment."*

Thus, in view of the provision of Sec.25F of the I.D. Act, 1947 as well as law laid down by the Hon'ble Apex Court, the Petitioner has to prove that she had worked continuously for 240 days in the service of the Respondent just preceding from the date of termination. But the Petitioner failed to discharge the initial burden of proving 240 days continuous service as per provision of Sec.25F of I.D. Act, 1947. Therefore, her claim that she was terminated in violation of Sec.25F, G, & H of the I.D. Act, 1947 is not tenable.

Thus, Point No.I is decided accordingly.

13. **Point No.II**: Petitioner claimed that several of her juniors has been awarded with temporary status under the scheme of 1993 and they are still working. The action of the Respondent in terminating the services of the Petitioner and in continuing her juniors is illegal and arbitrary. In this context, Petitioner examined herself as WW1 wherein she has reiterated in chief examination her claim as alleged in the Claim statement. But in cross examination she states, "I am not aware that workers who have been appointed prior to 1990 have been regularized in their post or not." But the Petitioner could not give any instance that any person appointed with her in the year 1998 as a daily wager has been accorded status of Temporary Employee under Temporary Status Scheme of 1993. Even no documentary evidence has been filed by the Petitioner to substantiate her plea in this regard.

14. On the other hand, Respondent has contended that as per the Government of India, Department of Personnel and Training (DOPT) office memo No. 51016/2/90-Estt.(C) dated 10.9.93, casual labourers who are in employment on the date of issue of the office memorandum and who have rendered continuous services at least 240 days were given temporary status. As the Petitioner was working from 1998 she could not be conferred with temporary status in the service as provided in the Scheme. The Petitioner herself stated in her representation that she has been working from 1998, therefore, contention of the Petitioner that her juniors were working on temporary status is absolutely false. The Respondent witness MW1 has reiterated the same contention in the chief examination. But the Petitioner did not cross examine MW1 on this point of eligibility criteria under temporary status scheme, 1993. Further, MW1 has stated that some casual workers have been given temporary status, those who have been engaged before 1993. It is not true to suggest that some of the juniors of Petitioner were given temporary status. MW1 further stated that, "*It is a fact that by 31.3.2014 there were 40 vacancies of MTS posts in their office. It is not correct to suggest that since there is sufficient vacancies in the Respondents office the Petitioner is entitled to get a service of temporary status in the Tobacco Board and the workmen is entitled to be re-instate in service along with back wages and other benefits."* Since under the temporary status scheme she was not found eligible as she was appointed much later from the scheme, 1993 in the year 1998. Therefore, since the Petitioner have been appointed in the year 1998, she was not covered as per OM of DOPT dated 10.9.1993 for temporary status. As such, she is not entitled for any

scheme regarding temporary status under the scheme. Therefore, Petitioner is failed to prove her claim in this respect also.

Thus, Point No.II is decided accordingly.

15. **Point No.III**: In view of the finding given in Point Nos. I & II, the Petitioner is not entitled to get any relief, hence, claim petition is liable to be dismissed.

Result:

The action of the management of Tobacco Board, Medarmetla of Ongole Distrcit, Andhra Pradesh in terminating the services of Smt. V. Seethamma, Full Time Sweeper, w.e.f. August, 2013 is legal and justified. The workman is not entitled to any relief as prayed for. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 6th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. V. Seethamma	MW1: Sri K. Satyanarayana

Documents marked for the Petitioner

Ex.W1:	Photocopy of representation to the Chairman, Tobacco Board, Guntur
Ex.W2:	Photocopy of letter issued to R1 by the Auction Superintendent dated 19.11.2004
Ex.W3:	Photocopy of letter, reply to Ex.W2
Ex.W4:	Photocopy of office order dated 30.12.2001
Ex.W5:	Photocopy of representation to the Respondent dt. 1010.2013
Ex.W6:	Photocopy of representation to ALC(C) dt. 30.12.2014
Ex.W7:	Photocopy of minutes of conciliation
Ex.W8:	Photocopy of failure report by ALC(C), Vijayawada.

Documents marked for the Respondent

NIL

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1215.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (14/2005) प्रकाशित करती है।

[सं. एल-12011/167/2004-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.14/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/167/2004- IR(B.II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 14 OF 2005

Parties : Employers in relation to the management of

UCO Bank.

AND

Their Workmen

Appearance :

On behalf of UCO Bank : Sri Pradip Kr. Upadhyay, Manager (Law).

On behalf of the Contractor M/s. M. Nath & Co. : Absent

On behalf of the Union/Workman: Sri A. Panigrahi, Authorised Representative.

Dated: 15th June, 2023

AWARD

By Order No L-12011/167/2004 (IR)(B-II) dated 21-04-2005, the Central Government, Ministry of Labour in excise of the power conferred under sub section 1(d) and 2(A) of section of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether the contract system between UCO Bank Head Office, Kolkata and M/s. M. Nath & Co. is genuine or sham? Whether Mr. Dilip Kr. Shaw and Mr. Sailendra Nath (working undr M/s. Nath & Co.) who are working in the Bank's premises in the jobs of operation of Generator & Electrical maintenance at the Bank's premises located at UCO Bank, Head Office (Alipur Staff Quarter), 1/1, Alipur Avenue, Kolkata- 700 027 are entitled for regularisation of their services in UCO Bank or not? If not, to what relief he is entitled to?

The facts that are necessary for determination of the above issue in gist is that UCO Bank has engaged M/s. M. Nath & Co. service provider for operation and maintenance of DG Set and electric maintenance work at UCO House, 1/1, Alipur Avenue, Calcutta. Therefore, the contractor engaged the concerned workmen mentioned in the reference order as an Electrician and Generator Operator.

It is the claim of the Union/workmen that they have been performing the job of an electrician and Generator Operator in the establishment of the Bank for more than 18 years. They were engaged by the Bank through the contractor in place of vacant posts of Electrician and Generator Operator arisen due to death, promotion and transfer of regular staff. The nature of work discharged by them is semi-skilled in nature. The job which they performed is of perennial in nature and integral part of the bank.

Normal routine or function of the Bank would be jeopardized if the nature of work performed by them is discharged by a normal contract labours. They are semi-skilled worker having vast technical experience. They have been engaged by the Bank for doing perennial nature of job through sham contractor. That Bank had earlier absorbed Sri M. Majumder and Sri Parmananda Behera, contractor employees in the post of Clerk and Gardener cum Farash on the basis of an agreement dated 31-01-1979. That the contractor whom the Bank has engaged does not have license as required under section 12 of Contractor Labours (Regulation and Abolition) Act, 1970 (hereinafter called as "CLRA Act"). Similarly, the UCo Bank too is not a registered establishment under section 7 of the CLRA Act. Therefore, the Bank has no authority to engage any contractor or engage any contractor labour to do its perennial nature of core jobs. Therefore, the union and workmen have prayed for absorption and regularization of the concerned workmen as regular employees of UCo Bank in view of the bipartite settlement dated 19-10-1966, under which Electrician and A.C. Plant Operator, Generator Operator and Helper are declared as semi-skilled workmen in the subordinate cadre of the Bank employees.

On the other hand the management of the Bank in its written statement has alleged the schedule of reference itself describe the workmen as employees of its contractor/service provider. Such fact ipso facto proves the workmen were never engaged by the Bank. There exit no relationship of employer and employee between the Bank and the workman.

It has further alleged that the Union which has espoused the dispute on behalf of the contractor's workmen, has no authority to raise dispute in respect of employee who are not regular employee of the Bank. It has also contended that service provider through whom the workmen were engaged in its establishment to do the job of electrician has less than twenty employees and as such it is not required to obtain license under section 12 of the CLRA Act.

That no notification under section 10 of the CLRA Act, has been issued in respect of the establishment of the Bank, prohibiting it to engage any contractor laborers. It has also contended that Bank having engaged more than 20 contractor employees at its different establishments it has duly registered itself under section 7 of the CLRA Act, 1970.

It has also contended, the management of UCo Bank, utilized the services contractors for temporary jobs to ensure operation and routine maintenance of the bank's A.C. Plant and Generator Set and also fixing tube lights, holders, switches etc. The management of the Bank make payment to the contractors and who in turn make payment to its employees at applicable rate of minimum wages. For extra work, additional payment is made on production of Log Book. Those employees are not under the control of the Bank. There is no sanctioned post of Electrician/Generator Operator in the Bank. Further without following the recruitment procedure the contractor workmen cannot be absorbed in the category of regular employees. Accordingly, the Bank has prayed for dismissal of the reference.

The record shows that contractor employer/service provider has failed to appear and filed its written statement and as such it has been proceeded exparte.

The Union has examined the Sri Sailendra Nath as W.W.no.1 and 12 documents produced by the union have been marked as Exhibit-W-1 to W-12 on formal proof being dispensed with from the side of the Union vide order dated 07-09-2006.

The management has examined Sri Tarun Sen, Chief Manager (Engineer) as M.W.1 and three documents produced by the management have been marked as ExhibitM-1 to M-3 on formal proof being dispensed with on 07-09-2006.

Representative of the union/workmen has referred to the following decisions in support of their contention and claim statement;

(1) Mukund Ltd. –vs- Mukund Staff and Officers' Association. 2004, LAB.I.C. 2791.

(2) Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat –vs- Hind Mazdoor Sabha (1995 SOL Case No.234).

(3) Maharashtra State Road Transport Corporation Vs Casteribe Rajya Parivahan Karmchari Sanghatana (Maharashtra SRTC) [(2009) 8 SCC 558].

(4) Oil and Natural Gas Corporation Vs Krishna Gopal & Ors. (Civil Appeal No. 1878 of 2016).

(5) Tinku K & Others –Vs- Union of India [WP (C) No.26934 of 2022].

On the other hand the management has referred to the following decisions in support of its case and contention:-

1. Jiban Krishna Mondal & Ors –vs- State of West Bengal reported in (2015) 12 SCC 74 (para 29).
2. State of Karnataka & Ors. –vs- Uma Devi (3) & Ors. reported kin (200^) 4 SCC 1 (para 15, 15 and 17).
3. Balwant Rai Saluja & Anr. –vs- Air India Ltd. & Ors. reported in (2014) 9 SCC 407 (para 83,87 and 89).

The Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs- Uma Debi & Ors. (2006) 4 SCC 1 has been pleased to hold "public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got down, is not precluded from making temporary appointments or engaging workers on daily wages. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time are filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other. Regular appointment must be the rule.

Equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

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"Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not can go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede such proposition out be usage to introduce new head of appointment in defence of rules or it might have the effect of setting usage naught the rules"

The Hon'ble Supreme Court has been pleased to consider State of Haryana Vs Piara Singh & Ors (1992) 3, SCR 826, where the Hon'ble Supreme Court held "ordinarily speaking, the creation and abolition of posts is the prerogative of executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be can be exercised either by making rules under the proviso to Article 309 of the Constitution of (in the absence of such Rules) by issuing Rules/ Instructions in exercised of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provision, rules and other instructions, if any, governing the condition of service".

The Hon'ble Supreme Court has been pleased to consider another judgment passed by the Hon'ble Supreme Court in Director, Institution of Management, Development, U.P. vs Smt Puspa Srivastava (1992) 3 SCR 712 where it was held "since the appointment was on purely contractual and adhoc basis on consolidated pay for a fix period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any role providing for regularisation after the period of service. A limited relief for directing the appointee to be permitted with sympathetic consideration to be continued in service till the end of concerned calendar year was issued. When the appointment was purely on adhoc and contractual basis for a limited period on the expiry of that period right to remain in the post come to an end."

The Hon'ble Supreme has further been pleased to consider Ashwini Kumar –vs- State of Bihar (1996) Supplementary (10) SCR 120 and where it was observed "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted the question of confirmation or regularisation of any irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis mean an available vacancy which is already sanctioned. If the initial entry itself is unauthorised and is not against any sanction vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.

Further, Uma Rani-vs - Registrar, Cooperative Societies and Ors.(2004) 7 SCC 112 was discussed and where it was held when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularised by the State. That regularisation is not and cannot be a mode of recruitment by any state within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularisation further more cannot be give permanence to an employee whose service are adhoc in nature. It was also held that the fact some persons had been working for a long time would not mean that they had acquired a right for regularisation."

The Hon'ble Supreme Court further held that while directing that appointments, temporary or causal, to be regularised or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain –not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on the ground alone it would

not have appropriate to jettison the constitutional scheme of appointment and to take view the person who has temporarily or causal got employed should be directed to be continued permanently. By doing so it will be creating another mode of appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties who are not having equal bargaining power, that too would not enable the court to grant any relief to the employees. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, only man that some people who at least got employment temporarily, contractual or causally would not be getting even the employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compel to accept a casual or temporary employment if one incline to go in for such employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequence following from it. In other works, even while accepting the employment, the persons concerned knows the nature of his employment. It is not an appointment to a post in a real sense and the terms. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the cause of the procedure established, for making regular appointment to available post in the services of the State. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or causal employees".

Let me decide the present case on the basis of the principle enunciated in the above decisions of the Hon'ble Supreme Court.

Prima facie the claim statement and oral evidence of one of the workmen do not reflect the workmen were engaged as an electrician/Generator Operator by a contractor/service provider of the Bank, rather it shows that the workmen were directly appointed by the bank on casual basis to do work in various capacity in the post of Electrician/ Generator Operator, but they were/are not paid salary and wages at per with other employees of the Bank. The workmen are working under the control and directions of the Chief Officer, Head Office, Planning and Development Department and overall under the control and supervision of Deputy Chief Officer an Electrical Engineer of the Bank, but payment was made to them through vouchers and later through a sham contractor named M/s. M. Nath & Co.

Whereas Exhibit-M-2 shows union has raised a dispute before A.L.C. in respect of the concerned workmen claiming their regularisation in Bank for working more than 18 years. It has also been alleged that the concerned workmen were shown engaged by bank through a sham contractor.

Exhibit-M-3 shows that such dispute was settled in between the workmen and their employer M/s. M.Nath & Co. as the employer agreed to pay Rs.88.30 paisa per day towards wages w.e.f. 01-06-2004 and other demands raised by the Union/Workmen in its representation dated 19-05-2004 was treated as dropped.

Exhibit-M-2 shows that UCO Bank had issued fresh terms of monthly payment to its contractor M/s. M.Nath & Co. in view of wage settlement that took place before the A.L.C. and gave direction to the cotractor to pay minimum wage of Rs.88.30 per day to the workers engaged by it for working in the establishment of the Bank. It further shows Bank gave direction to the contractor to furnish copy of payment document along with monthly bills. Such document leave no room for doubt Sri Sailen Nath and Sri Dilip Shaw were employees of M/s. M.Nath & Co. to whom contractor for electric maintenance and operation and maintenance for D.G.Set at UCO House, 1/1, Alipur Avenue, Calcutta was given.

W.W. 1 in his evidence recorded under oath has stated, he has been working as a sub staff of UCO Bank since 1980. He works as a Geneerator Operator, Pump Operator and also as an Electrician. He possess electrical license for doing the job of an Electrician. He works as an Electrician through out the year in the establishment of the Bank. Some time he has to discharge the function of a watchman in the absence of the regular watchman. Sometimes he has to work as a A.C. mechanic in the bank quarters. The Log Book and Atenandance Register are maintained by bank. Duty chart is prepared by Debu Babu of the bank.

He works against a permanent vacancy of an Electrician named Sri Paritosh Roy who was transferred from UCO House. Sri Dilip Shaw also works as an Electrician there since 1982.

However, he in his chief admitted initial M/s. M. Nath & Co. engaged them in the bank but interview was taken by the bank and their licenses were checked by the bank officials. He has also stated Md. Selim and Md. Lasin were two permanent employees of the bank were Liftmen in the staff quarter. After their promotion their work is done by contractor's employee.

He has also stated that permanent Electrician of the bank gets Rs.9,000/- to Rs.10,000/- per month but he is paid only lump sum amount of Rs.4,029/- per month. He has also stated that there is a periodical enhancement in the wages paid to them. He has also stated that M/s. M. Nath & Co. has engaged more than 20 to 30 workmen in the establishment in the bank.

During cross examination he said that he does not have any document to prove that wages was paid to him by the bank directly. That he has no appointment letter issued by the bank. He has admitted raising a dispute before the Conciliation Officer in 2004 against M/s. M. Nah & Co. for denying minimum wages to him.

Apparently, the evidence of the witness appears to be inconsistent and self-contradictory. In order to get regularization he has stated that he is a sub staff of bank and working for the bank since 1980 but at the same time he has stated he was engaged by M/s. M. Nath & Co. and he is a licensed Electrician but Exhibit-M-3 prima facie shows the two workmen under reference were/are employees of M/s. M. Nath & Co.

Sri Tarun Sen, M.W.-1, Chief Manager (Engineer), Zonal Office, UCo Bank in his evidence stated that the workman who has espoused the present dispute was and is the employee of M/s. M. Nath & Co. That Bank has no control, authority and supervision over any person engaged by the contractors who was entrusted to carry out the contract job of operation and maintenance of A.C. Plant, Generator Set and electricity. Conciliation proceeding was held before the A.L.C., (Central) Calcutta between M/s. M. Nath & Co. and its employee on 09-08-2004 with regard to minimum wages.

He has stated the Bank takes Registration Certificate from A.L.C. if the labour contractors engaged by the Bank is more than 20. Contract labouers of the contractor of the UCO Bank are working as Electricians, Electrician-cum-Generator Operator. He has stated without seeing the office record that after the retirement and promotion of Salil Bose, Sudhir Pal, Paritosh Roy and M.R. Dutta who were working as Electrician cum Generator Operator the bank introduced contract labour system.

During cross examination he stated that electric maintenance, maintenance of A.C. Plant and operator and maintenance of Generator Set is required for maintenance of the office and contractors are engaged for doing such work which are not perennial in nature.

Exhibit-W-1 & M-3 further prove that union had raised an industrial dispute before the A.L.C. (central), Kolkata on 27-11-2003 for absorption and regularization of the concerned workmen in the bank for working for more than 18 years under a sham contractor. Such dispute was ended with execution of Memorandum of Settlement before the A.L.C. and where the contractor employer M/s. M. Nath & Co. was directed to pay minimum wages to which the workmen was entitled to. It further shows the workmen on execution of such settlement had dropped all their other demands including regularization. Therefore, it appears the concerned workmen were not directly engaged by the Bank on contractual basis as alleged by WW-1, rather he was an employee of the contractor of the Bank.

The Exhibit-W-3 appears to be the Memorandum of Settlement dated 31-01-1979 vide which the bank had absorbed 13 persons in different categories like clerical and subordinate posts w.e.f. 02-02-1979, but it does not disclose those absorbed persons were employees of contractors of the Bank.

Exhibit-W-8 appears to be memo of Central Bank of India dated 31-12-1987 in respect of appointment of one Sri Shyamal Kar was appointed as Plant Operator / Helper in subordinate cadre, but this Tribunal is not inclined to consider those documents as it appears to be the photocopy and without any authenticity of the same, that it was indeed issued by the Central Bank.

Now, law is settled with regard to claim made by the contractor labours for their absorption in regular post, they have to prove that they were engaged to do perennial nature of core work in the establishment of the principal employer. The work done by them is not temporary or seasonal in nature. They discharge their duty in the establishment of the principal employer under the direct supervision and control of the principal employer, or the principal employer has the authority to take disciplinary action against them and has authority to dismiss them from the service.

It is a matter of common knowledge the core function of the bank is receiving money, keeping money of the customers and lending money. Therefore, it appears that contractors were/are engaged to provide incidental services of maintenance of electricity, Generator Set, A.C. Plants.

From the above documents it is seen the Bank used to get all services which is incidental to its business done through its contractors/service providers' employees. The concerned workmen were employed by the contractor to do the job of an Electrician/Generator operator etc. Their salary was paid by the contractor and who used to raise bills and submit before the Bank along with Log book in case of overtime allowance. No cogent and satisfactory evidence have come on record to show that bank indeed used to supervise the work of the workmen and the bank has/had the authority to dismiss the workman.

It is admitted fact that the contractor had less than 20 employees working for it at the relevant time. Therefore, in view of provision of section 1 (4) (a) read with section 12 of the CLRA Act, the contractor need not obtain license for supply of employees to the principal employer. Therefore, question of obtaining license under the Act by the contractor does not arise.

However, Exhibit-W-11 shows that UCO Bank have engaged more than 32 contractors to do different nature of works such as plumbing, lift installation, electrification works, comprehensive maintenance work, maintenance of A.C. machines and maintenance of the same, internal electric works, operation of D. G. Set, HT and Lt, OCB and water pump, maintenance of the same, electric maintenance works, telecom maintenance works, repair and

renovation of building, by engaging more than 20 contractor employees in different offices which are not related to the core function of the bank. Exhibit –W-11 further shows that bank was already a registered establishment under CLRA Act.

Therefore, it is seen the concerned workmen were engaged by contractor having less than 20 employees at the relevant time and question of obtaining license by it under CLRA Act does not arise. On the other hand the Bank having engaged more than 32 contractors to do different kind of jobs at its different establishments it was/is duly registered under the CLRA Act.

It is worth to mention here that no material whatsoever has come from the side of the Union or workman, that bank is a notified establishment under section 10 of the CLRA Act. In that case the bank is not prevented from engaging contractor labour under the Act to get its incidental/non-core work done through contractors' employees.

Further, the Union has failed to produce any document to prove that the workmen are/were working against the sanctioned vacant post.

Nothing has come on record that a contract between the principal employer and the contractor employer to be sham, nominal or merely a camouflage to deprive contractor's employee with permanent job and employment benefits. More so, no evidence has come on record to show under which officer of the bank the concerned workman used to work or under whose direction he used to discharge his duty/work. Therefore, it is seen that bank had no control over the employees of the contractor. Nothing has come on record to show that Bank has power to dismiss them from service after holding domestic enquiry. In fact, it has come on record salary is paid to the concerned workmen by the contractors.

The work of an Electrician cannot be said to be perennial in nature. His service is required only as and when some fault occurs in the system. The nature of his job is not like that of a regular staff of Bank. So the job of an Electrician cannot be said to be perennial in nature.

Further, union failed to produce documents or examine those employees of the bank before this Tribunal to prove indeed they were /are in permanent regular employees of the bank in subordinate cadre and they discharge the functions of Electricians, A.C. Plant Operator, DG Set Operator and Pump Operator or on their transfer, retirement or on promotion vacancy was created and against such vacancy the bank instead of filling up the post by regular recruitment got the work done through contractors. The union miserably failed to produce documents to show there is sanctioned posts in the bank in respect of D.G.Set operator and Electrician and the post is still lying vacant.

In view of Uma Debi (supra) that no regularization or absorption of contractors' employee can be made, no matter how long he might have worked and that too without following the recruitment policy and recruitment rules. The regularisation cannot be a mode of recruitment.

In view of the above, this Tribunal holds the workman being an employee of contractor employer cannot claim regularisation and absorption in the service of the bank and that too against non-existence post. This Tribunal does not find any merit in the reference. Accordingly the reference No. 14 of 2005 is dismissed. Award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1216.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (27/2004) प्रकाशित करती है।

[सं. एल- 12011/46/2004- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.27/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/46/2004- IR(B.II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 27 OF 2004

Parties : Employers in relation to the management of

UCo Bank.

AND

Their Workmen

Appearance :

On behalf of UCo Bank : Sri Pradip Kumar Upadhaya, Manager (Law).

On behalf of the Contractor M/s.Swapan Electrical Works: Absent

On behalf of the Union: Sri Ashok Kumar Panigrahi Authorised Representative

Dated:15th June, 2023

AWARD

By Order No L-12011/46/2004 (IR)(B-II) dated 19-07-2004, the Central Government, Ministry of Labour in excise of the power conferred under sub section 1(d) and 2(A) of section 10 of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether there is any relationship of employer and employee between the management of UCO Bank and Mr. Bappa Mondal and Mr. Sadananda Bhattacharya working under contractor M/s. Swapan Electric Works at UCO Bank, Head Office, Kolkata., If so, whether they are entitled for regularisation of their service in UCO Bank? If not, to what relief they are entitled to?

The facts that are necessary for determination of the above issue in gist is that UCo Bank has engaged M/s. Swapan Electric Works, service provider for routine maintenance Air Conditioning Plant at its International Banking Branch at Red Cross Palace, Calcutta. Therefore, the two contractor engaged the concerned workmen mentioned in the reference order as A.C Plant Operator/Helper.

It is the claim of the Union/workmen that they have been performing the job of operation and routine maintenance of the Central Air Conditional Plants and electrical maintenance in the establishment of the Bank for last 18 years. That they have been engaged by the Bank through the contractor in place of regular employee in the post of Electrician cum Air Conditioning Plant Operator/Helper against the vacancy that had arisen due to retirement, promotion and transfer of regular staff. The nature of work discharged by them is semi-skilled in nature. The job which they performed is of perennial in nature and integral part of the bank.

Normal routine or function of the Bank would be jeopardized if the nature of work performed by them is discharged by a normal contract labours. They are semi-skilled workmen having vast technical experience. That they have been engaged by the Bank for doing perennial nature of job through sham contractor. That Bank had earlier absorbed Sri M. Majumder and Sri Parmananda Behera, contractor employees in the post of Clerk and Gardener cum Farash on the basis of an agreement dated 31-01-1979. That they have also alleged, the contractor whom the Bank have engaged do not have license as required under section 12 of Contractor Labours (Regulation and Abolition) Act, 1970 (hereinafter called as "CLRA Act"). Similarly, the UCo Bank too is not a registered establishment under section 7 of the CLRA Act. Therefore, the Bank has no authority to engage any contractor or engage any contractor labour to do its perennial nature of core jobs. Therefore, the union and workmen have prayed for absorption and regularization of the above two persons as regular employee of UCo Bank in view of the bipartite settlement dated 19-10-1966 which provides that Electrician and A.C. Plant Operator/ Helper as semi-skilled workmen and in the subordinate cadre of the Bank employees.

On the other hand the management of the Bank in its written statement has alleged the schedule of reference itself describe those two workmen as employees of its contractor/service providers. Such fact ipso facto proves those workmen were never engaged by the Bank. There exit no relationship of employer and employees between the Bank and those six workmen.

It has further alleged that the Union which has espoused the dispute on behalf of the contractors' workmen, have no authority to raise dispute in respect of employees who are not regular employees of the Bank. It has also contended that those service providers through whom those employees were engaged in its establishment to do the job

of operation and maintenance of A.C. Plant has less than twenty employees and as such it was/is not required to obtain license under section 12 of the CLRA Act.

That no notification under section 10 of the CLRA Act, has been issued in respect of the establishment of the Bank, prohibiting it to engage any contractor laborers. It has also contended that Bank having engaged more than 20 contractor employees at its different establishments, it has duly registered itself under section 7 of the CLRA Act, 1970.

It has also contended, the management of UCo Bank, utilized the service of the two contractor for temporary jobs to ensure operation and routine maintenance of the bank's A.C. Plant. The management of the Bank make payment to the contractor and who in turn make payment to its employees at the applicable rate of minimum wages. For extra work, additional payment is made on production of Log Book. Those employees are not under the control of the Bank. There is no sanctioned post for Electrician and Air Conditioner Plant Operator in the Bank. Further without following the recruitment procedure the contractor workmen cannot be absorbed in the category of regular employees. Accordingly, the Bank has prayed for dismissal of the reference.

The record shows that contractor employer/service provider has failed to appear and filed its written statement and as such it has been proceeded exparte.

The Union has declined to adduce oral evidence to substantiate its claim and case as per order sheet dated 18.08.2010. However,13 documents filed by the Union have been marked as Exhibit W-1 to W-13 on formal proof being dispensed with on 10-04-2007.

The management has examined Sri Tarun Sen, Chief Manager (Engineer) as M.W.1. Three documents have been marked as ExhibitM-1 to M-4 on formal proof being dispensed with on 10-04-2007.

Representative of the union/workmen has referred to the following decisions in support of their contention and claim statement;

1. Mukund Ltd. –vs- Mukund Staff and Officers' Association. 2004, LAB.I.C. 2791.
2. Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat –vs- Hind Mazdoor Sabha (1995 SOL Case No.234).
3. Maharashtra State Road Transport Corporation Vs Casteribe Rajya Parivahan Karmchari Sanghatana (Maharashtra SRTC) [(2009) 8 SCC 558].
4. Oil and Natural Gas Corporation Vs Krishna Gopal & Ors. (Civil Appeal No. 1878 of 2016).
5. Tinku K & Others –Vs- Union of India [WP (C) No.26934 of 2022].

On the other hand the management has referred to the following decisions in support of its case and contention:-

1. Jiban Krishna Mondal & Ors –vs- State of West Bengal reported in (2015) 12 SCC 74 (para 29).

2.State of Karnataka & Ors. –vs- Uma Devi (3) & Ors. reported kin (200^) 4 SCC 1 (para 15, 15 and 17).

3.Balwant Rai Saluja & Anr. –vs- Air India Ltd. & Ors. reported in (2014) 9 SCC 407 (para 83,87 and 89).

The Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs- Uma Debi & Ors. (2006) 4 SCC 1 has been pleased to hold "public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got down, is not precluded from making temporary appointments or engaging workers on daily wages. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time are filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other. Regular appointment must be the rule.

Equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

The Hon'ble Supreme Court of India has been pleased to quote the following from the judgment that has been passed by the Hon'ble Supreme Court in R.N. Nanjundappa vs T.Thimmaiha & Anrs (1972) 2 SCR 799-:

"Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not can go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede such proposition out be usage to introduce new head of appointment in defence of rules or it might have the effect of setting usage naught the rules"

The Hon'ble Supreme Court has been pleased to consider State of Haryana Vs Piara Singh & Ors (1992) 3, SCR 826, where the Hon'ble Supreme Court held "ordinarily speaking, the creation and abolition of posts is the prerogative of executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be can be exercised either by making rules under the proviso to Article 309 of the Constitution of (in the absence of such Rules) by issuing Rules/ Instructions in exercised of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provision, rules and other instructions, if any, governing the condition of service".

The Hon'ble Supreme Court has been pleased to consider another judgment passed by the Hon'ble Supreme Court in Director, Institution of Management, Development, U.P. vs Smt Puspa Srivastava (1992) 3 SCR 712 where it was held "since the appointment was on purely contractual and adhoc basis on consolidated pay for a fix period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any role providing for regularisation after the period of service. A limited relief for directing the appointee to be permitted with sympathetic consideration to be continued in service till the end of concerned calendar year was issued. When the appointment was purely on adhoc and contractual basis for a limited period on the expiry of that period right to remain in the post come to an end."

The Hon'ble Supreme has further been pleased to consider Ashwini Kumar –vs- State of Bihar (1996) Supplementary (10) SCR 120 and where it was observed "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted the question of confirmation or regularisation of any irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis mean an available vacancy which is already sanctioned. If the initial entry itself is unauthorised and is not against any sanction vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.

Further, Uma Rani-vs - Registrar, Cooperative Societies and Ors.(2004) 7 SCC 112 was discussed and where it was held when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularised by the State. That regularisation is not and cannot be a mode of recruitment by any state within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularisation further more cannot be give permanence to an employee whose service are adhoc in nature. It was also held that the fact some persons had been working for a long time would not mean that they had acquired a right for regularisation."

The Hon'ble Supreme Court further held that while directing that appointments, temporary or causal, to be regularised or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain –not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on the ground alone it would

not have appropriate to jettison the constitutional scheme of appointment and to take view the person who has temporarily or causal got employed should be directed to be continued permanently. By doing so it will be creating another mode of appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties who are not having equal bargaining power, that too would not enable the court to grant any relief to the employees. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, only man that some people who at least got employment temporarily, contractual or causally would not be getting even the employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compel to accept a casual or temporary employment if one incline to go in for such employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequence following from it. In other works, even while accepting the employment, the persons concerned knows the nature of his employment. It is not an appointment to a post in a real sense and the terms. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the cause of the procedure established, for making regular appointment to available post in the services of the State. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or causal employees".

Let me decide the present case on the basis of the principle enunciated in the above decisions of the Hon'ble Supreme Court.

Exts.-W-1, W-3, W-4, W-5, W-6, W-7, W-8,W-12, W-13 and Exts-M-1 prima facie prove that bank had/has indeed engaged M/s. Swapan Electric Works for operation and routine maintenance of the A.C.Plant of its office located at Red Cross Palace, Calcutta. The contractor had/has deployed its two employees named above to do the job for which it was engaged.

Exhibit-W-1 prima facie shows, union had raised an industrial dispute before the A.L.C. (central), Kolkata on 27-11-2003 on the basis of the order passed by the Hon'ble High Court in W.P. No.378 of 2000 on 22-05-2001(Ext.-W-2), where the Hon'ble High Court declined to entertain the application made by Sri Uttam Kumar Seal for his absorption and regularisation in the bank and where the Union has admitted that those two workmen named in the reference order were indeed the employees of M/s. Swapan Electric Works, the contractor of UCo Bank. Exhibit-W-1 shows the union has raised the dispute before A.L.C. (Central) in respect of those two employees demanding their regularization alleging that they have been shown as an employee of sham contractor by the management of the Bank. Those employees are working for the bank for more than 18 years. Exhibit-M-2 shows such dispute was ended in settlement after the wage of both workmen was fixed at the rate of Rs.88.30 per day. That they had dropped their other demands made against both the employers in their representation dated 19-05-2004.

Thus, above documents leaves no room for doubt that two concerned workmen are/were employees of M/s. Swapan Electric Works contractor/service provider engaged by the bank for maintenance of five A.C. units and they were not directly engaged by the Bank on contractual basis. Those employees were under the direct employment of the contractor.

Sri Tarun Sen, M.W.-1, Chief Manager (Engineer), Zonal Office, UCo Bank in his evidence stated that these workmen who have espoused the present dispute were and are the employees of M/s. Swapan Electric Works. That Bank has no control, authority and supervision over any person engaged by the contractors who was entrusted to carry out the contract job of operation and maintenance of A.C. Plant. Conciliation proceeding was held before the A.L.C., (Central) Calcutta between M/s. Swapan Electric Works and their employees on 09-08-2004 with regard to minimum wages.

During cross examination he expressed his ignorance about whether the contractors engaged by the bank are the licensed contractors under CLRA Act or not, whether bank is a registered establishment under the said Act. Further, he has stated that without seeing the official records he was unable to say whether those workmen working under the contractors were/are paid minimum wages or not or whether those persons were engaged by the bank through contractors against a permanent vacancy or that whether there is a valid contract between the bank and those contractors or not.

Exhibit-W-3 appears to be petition of Swapan Electric Works dated 16.04.2003 to the A.L.C. informing about revision of wages of its employees working for UCO Bank

Exhibit-W-4 appears to be memo of Central Bank of India dated 31-12-1987 in respect of appointment of one Sri Shyamal Kar was appointed as Plant Operator / Helper in subordinate cadre, but this Tribunal is not inclined to consider those documents as it appears to be the photocopy and without any authenticity of the same, that it was indeed issued by the Central Bank.

Now, law is settled with regard to claim made by the contractor labours for their absorption in regular post they have to prove that they were engaged to do perennial nature of core work in the establishment of the

principal employer. The work done by them is not temporary or seasonal in nature. They discharge their duty in the establishment of the principal employer under the direct supervision and control of the principal employer, or the principal employer has the authority to take disciplinary action against them and has authority to dismiss them from the service.

It is a matter of common knowledge the core function of the bank is receiving money, keeping money of the customers and lending money. Therefore, it appears that contractors were/are engaged to provide incidental services of maintenance of electricity, Generator Set, A.C. Plants.

From the above documents it is seen the Bank used to get all services which is incidental to its business done through its contractors/service providers' employees. Those employees were employed by the contractors to do the job of electrician and A.C. Plant Operator. Their salary was paid by the contractor and who used to raise bills and submit before the Bank along with Log book in case of overtime allowance. No cogent and satisfactory evidence have come on record to show that bank indeed used to supervise the work of those workmen and the bank has/had the authority to dismiss those workmen.

It is admitted fact that both the contractors had less than 20 employees working for them at the relevant time. Therefore, in view of provision of section 1 (4) (a) read with section 12 of the CLRA Act, those two contractors need not obtain license for supply of employees to the principal employer. Therefore, question of obtaining license under the Act by those two contractors do not arise.

However, Exhibit-W-11 shows that UCo. Bank have engaged more than 32 contractors to do different nature of works such as plumbing, lift installation, electrification works, comprehensive maintenance work, maintenance of A.C. machines and maintenance of the same, internal electric works, operation of D.G.Set, HT and Lt, OCB and water pump, maintenance of the same, electric maintenance works, telecom maintenance works, repair and renovation of building, by engaging more than 20 contractor employees in different offices which are not related to the core function of the bank. Exhibit –W-12 further shows that bank was already a registered establishment under CLRA Act.

Therefore, it is seen the concerned workmen were engaged by contractors having less than 20 employees at the relevant time and question of obtaining licences by them under CLRA Act do not arise. On the other hand the Bank having engaged more than 32 contractors to do different kind of jobs at its different establishments it was/is duly registered under the CLRA Act.

It is worth to mention here that no material whatsoever has come from the side of the Union or workmen, that bank is a notified establishment under section 10 of the CLRA Act. In that case the bank is not prevented from engaging contractor labour under the Act to get its incidental/non-core work done through contractors' employees.

Further, the Union has failed to produce any document to prove that those two workmen are/were working against the sanctioned vacant posts.

Exhibit-W-6 and W-7 show, the principal employer had supplied the schedule of work to be done by the contractor and it was the contractor who was to get the work done as per the schedule given by the bank. Therefore, it is seen that the principal employer had no control over the work to be done by the contractor or by his employees and which prove the contractor's employees were not under the control of the management of the bank or their work was supervised by the authority of the bank.

Nothing has come on record that a contract between the principal employer and the contractor employer be sham, nominal or merely a camouflage to deprive contractor's employees with permanent job and employment benefits. More so, no evidence has come on record to show under which officer of the bank those employees used to work or under whose direction they used to discharge their duty/work. Therefore, it is seen that bank had no control over the employees of the contractors. Nothing has come on record to show that Bank has power to dismiss them from service after holding domestic enquiry. In fact, Exhibit-M-2 &3 prima facie prove salary is not paid to those concerned workmen by the bank but by the contractors.

The work of an A.C. Plant operator cannot be said to be perennial in nature. Their service is required only as and when fault occurs in the system. The nature of their job is not like that of a regular staff of Bank. and for which purpose such service appears to have been sourced out to private contractors by the Bank.

The union miserably failed to produce documents to show there is sanctioned posts in the bank in respect of the work done by the concerned contractor's employees and those posts are still lying vacant.

It is worth to mention here along with this reference case the Tribunal has disposed of other five cases filed by the same union of the bank seeking the same relief in respect of 15 contractor employees and in all those cases the union has mentioned names of same persons as permanent employees of bank and on their retirement, promotion and transfer post of Electrician, A.C. Plant Operator, DG Set Operator, Pump Operator, Water Treatment Plant Operator etc. the posts are lying vacant and which the bank has failed to fill up by way of regular recruitment.

For the sake of argument even if we assume indeed there are some permanent posts for the above mentioned job lying vacant still it is not known how 15 persons could claim permanency against those few vacant posts.

Be that as it may, in view of Uma Debi (supra) that no regularization or absorption of contractors' employee can be made, no matter how long they might have worked and that too without following the recruitment policy and recruitment rules. The regularisation cannot be a mode of recruitment.

In view of the above, this Tribunal holds the workmen being the employees of contractor employer cannot claim regularization and absorption in the service of the bank and that too against non-existence post. This Tribunal does not find any merit in the reference. Accordingly the reference No. 27 of 2004 is dismissed. Award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1217.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (31/2004) प्रकाशित करती है।

[सं. एल - 12011/42/2004- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.31/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/42/2004- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 31 OF 2004

Parties : Employers in relation to the management of

UCo Bank.

AND

Their Workman

Appearance :

On behalf of UCO Bank : Sri Pradip Kr. Upadhyay, Manager (Law).

On behalf of the Contractor M/s. M. Nath & Co. : Absent

On behalf of the Union/Workman: Sri A.Panigrahi, Authorised Representative.

Dated: 15th June, 2023

AWARD

By Order No L-12011/42/2004 (IR)(B-II) dated 19-07-2004, the Central Government, Ministry of Labour in excise of the power conferred under sub section 1(d) and 2(A) of section of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether there is any relationship of employer and employee between the management of UCO Bank and Mr. Ranjan Nath working under contractor M/s. M. Nath & Co. at UCO Bank, Head Office, Kolkata., If so, whether he is entitled for regularisation of his service in UCO Bank? If not, to what relief he is entitled to?

The facts that are necessary for determination of the above issue in gist is that UCo Bank has engaged M/s. M.Nath & Co. service provider for operation and maintenance of DG Set and operation of L.T. Switches minor repairs of electric fixtures and appliances at its Office situated at 12 Old Court House Street, Calcutta. Therefore, the contractor engaged the concerned workman mentioned in the reference order as an Electrician.

It is the claim of the Union/workman that he has been performing the job of an electrician in the establishment of the Bank for more than 18 years. He was engaged by the Bank through the contractor in place of a vacant post of Electrician arisen due to death, promotion and transfer of regular staff. The nature of work discharged by him is semi-skilled in nature. The job which he performed is of perennial in nature and integral part of the bank.

Normal routine or function of the Bank would be jeopardized if the nature of work performed by him is discharged by a normal contract labour. He is a semi-skilled workman having vast technical experience. He has been engaged by the Bank for doing perennial nature of job through sham contractor. That Bank had earlier absorbed Sri M. Majumder and Sri Parmananda Behera, contractor employees in the post of Clerk and Gardener cum Farash on the basis of an agreement dated 31-01-1979. That the contractor whom the Bank has engaged does not have license as required under section 12 of Contractor Labours (Regulation and Abolition) Act, 1970 (hereinafter called as "CLRA Act"). Similarly, the UCo Bank too is not a registered establishment under section 7 of the CLRA Act. Therefore, the Bank has no authority to engage any contractor or engage any contractor labour to do its perennial nature of core jobs. Therefore, the union and workman have prayed for absorption and regularization of the Sri Ranjan Nath as regular employee of UCo Bank in view of the bipartite settlement dated 19-10-1966, under which Electrician and A.C. Plant Operator, Generator Operator and Helper are declared as semi-skilled workmen in the subordinate cadre of the Bank employees.

On the other hand the management of the Bank in its written statement has alleged the schedule of reference itself describe the workman as an employee of its contractor/service provider. Such fact ipso facto proves the workman was never engaged by the Bank. There exit no relationship of employer and employee between the Bank and the workman.

It has further alleged that the Union which has espoused the dispute on behalf of the contractors' workman, has no authority to raise dispute in respect of employee who is not regular employee of the Bank. It has also contended that service provider through whom the workman was engaged in its establishment to do the job of electrician has less than twenty employees and as such it is not required to obtain license under section 12 of the CLRA Act.

That no notification under section 10 of the CLRA Act, has been issued in respect of the establishment of the Bank, prohibiting it to engage any contractor laborers. It has also contended that Bank having engaged more than 20 contractor employees at its different establishments it has duly registered itself under section 7 of the CLRA Act, 1970.

It has also contended, the management of UCo Bank, utilized the services contractors for temporary jobs to ensure operation and routine maintenance of the bank's A.C. Plant and Generator Set and also fixing tube lights, holders, switches etc. The management of the Bank make payment to the contractors and who in turn make payment to its employees at applicable rate of minimum wages. For extra work, additional payment is made on production of Log Book. Those employees are not under the control of the Bank. There is no sanctioned post of Generator Operator in the Bank. Further without following the recruitment procedure the contractor workman cannot be absorbed in the category of regular employee. Accordingly, the Bank has prayed for dismissal of the reference.

The record shows that contractor employer/service provider has failed to appear and filed its written statement and as such it has been proceeded exparte.

The Union has examined the concerned workman as W.W.no.1 and 16 documents produced by the union have been marked as Exhibit-W-1 to W-16 on formal proof being dispensed with from the side of the Union vide order dated 13-03-2007.

The management has examined Sri Tarun Sen, Chief Manager (Engineer) as M.W.1 and three documents produced by the management have been marked as ExhibitM-1 to M-3 on formal proof being dispensed with on 13-03-2007.

Representative of the union/workmen has referred to the following decisions in support of their contention and claim statement;

1. Mukund Ltd. –vs- Mukund Staff and Officers' Association. 2004, LAB.I.C. 2791.
2. Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat –vs- Hind Mazdoor Sabha (1995 SOL Case No.234).
3. Maharashtra State Road Transport Corporation Vs Casteribe Rajya Parivahan Karmchari Sanghatana (Maharashtra SRTC) [(2009) 8 SCC 558].
4. Oil and Natural Gas Corporation Vs Krishna Gopal & Ors. (Civil Appeal No. 1878 of 2016).
5. Tinku K & Others –Vs- Union of India [WP (C) No.26934 of 2022].

On the other hand the management has referred to the following decisions in support of its case and contention:-

1. Jiban Krishna Mondal & Ors –vs- State of West Bengal reported in (2015) 12 SCC 74 (para 29).

2.State of Karnataka & Ors. –vs- Uma Devi (3) & Ors. reported kin (200^) 4 SCC 1 (para 15, 15 and 17).

3.Balwant Rai Saluja & Anr. –vs- Air India Ltd. & Ors. reported in (2014) 9 SCC 407 (para 83,87 and 89).

The Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs- Uma Debi & Ors. (2006) 4 SCC 1 has been pleased to hold "public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got down, is not precluded from making temporary appointments or engaging workers on daily wages. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time are filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other. Regular appointment must be the rule.

Equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

The Hon'ble Supreme Court of India has been pleased to quote the following from the judgment that has been passed by the Hon'ble Supreme Court in R.N. Nanjundappa vs T.Thimmaiha & Anrs (1972) 2 SCR 799-:

"Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not can go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede such proposition out be usage to introduce new head of appointment in defence of rules or it might have the effect of setting usage naught the rules"

The Hon'ble Supreme Court has been pleased to consider State of Haryana Vs Piara Singh & Ors (1992) 3, SCR 826, where the Hon'ble Supreme Court held "ordinarily speaking, the creation and abolition of posts is the prerogative of executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be can be exercised either by making rules under the proviso to Article 309 of the Constitution of (in the absence of such Rules) by issuing Rules/ Instructions in exercised of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provision, rules and other instructions, if any, governing the condition of service".

The Hon'ble Supreme Court has been pleased to consider another judgment passed by the Hon'ble Supreme Court in Director, Institution of Management, Development, U.P. vs Smt Puspa Srivastava (1992) 3 SCR 712 where it was held "since the appointment was on purely contractual and adhoc basis on consolidated pay for a fix period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any role providing for regularisation after the period of service. A limited relief for directing the appointee to be permitted with sympathetic consideration to be continued in service till the end of concerned calendar year was issued. When the appointment was purely on adhoc and contractual basis for a limited period on the expiry of that period right to remain in the post come to an end."

The Hon'ble Supreme has further been pleased to consider Ashwini Kumar –vs- State of Bihar (1996) Supplementary (10) SCR 120 and where it was observed "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted the question of confirmation or regularisation of any irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis mean an available vacancy which is already sanctioned. If the initial entry itself is unauthorised and is not against any sanction vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.

Further, Uma Rani-vs - Registrar, Cooperative Societies and Ors.(2004) 7 SCC 112 was discussed and where it was held when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularised by the State. That regularisation is not and cannot be a mode of recruitment by any state within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularisation further more cannot be give permanence to an employee whose service are adhoc in nature. It was also held that the fact some persons had been working for a long time would not mean that they had acquired a right for regularisation."

The Hon'ble Supreme Court further held that while directing that appointments, temporary or causal, to be regularised or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain –not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on the ground alone it would not have appropriate to jettison the constitutional scheme of appointment and to take view the person who has temporarily or causal got employed should be directed to be continued permanently. By doing so it will be creating another mode of appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties who are not having equal bargaining power, that too would not enable the court to grant any relief to the employees. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, only man that some people who at least got employment temporarily, contractual or causally would not be getting even the employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compel to accept a casual or temporary employment if one incline to go in for such employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequence following from it. In other works, even while accepting the employment, the persons concerned knows the nature of his employment. It is not an appointment to a post in a real sense and the terms. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the cause of the procedure established, for making regular appointment to available post in the services of the State. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or causal employees".

Let me decide the present case on the basis of the principle enunciated in the above decisions of the Hon'ble Supreme Court.

Prima facie the claim statement and oral evidence of the workman do not reflect the workman was engaged as an electrician by a contractor/service provider of the Bank, rather it shows that the workman was directly appointed by the bank on casual basis to do work in various capacity in the post of Electrician, but he is not paid salary and wages at per with other employees of the Bank. The workman is working under the control and directions of the Chief Officer, Head Office, Planning and Development Department and overall under the control and supervision of Deputy Chief Officer an Electrical Engineer of the Bank, but payment was made to him through a sham contractor named M/s. M. Nath & Co.

Whereas Exhibit-M-2 shows union has raised a dispute before A.L.C. in respect of this workman claiming his regularisation in Bank for working more than 18 years. It has also been alleged that the concerned workman was engaged by bank through a sham contractor.

Exhibit-M-3 shows that such dispute was settled in between the workman and his employer M/s. M.Nath & Co. as the employer agreed to pay Rs.88.30 paisa per day w.e.f. 01-06-2004 and other demands raised by the Union/Workman in its representation dated 19-05-2004 was treated as dropped.

Exhibit-M-2 shows that UCO Bank had issued fresh terms of monthly payment to its contractor M/s. M.Nath & Co. in view of wage settlement that took place before the A.L.C. and gave direction to the cotractor to pay minimum wage of Rs.88.30 per day to the workers engaged by it for working in the establishment of the Bank. It further shows Bank gave direction to the contractor to furnish copy of payment document along with monthly bills.

Such document leave no room for doubt Sri Ranjan Nath was an employee of M/s. M.Nath & Co. to whom contractor for operation and maintenance for D.G.Set and operation of LT Switches etc. At 16-A, B.T. M.Sarani, Kolkata was given.

From the evidence of W.W. 1 it is seen that he is engaged as Electricians cum Generator Operator at UCo Bank and he is required to work in different branches of the Bank. He has been working against the permanent vacancies created due to promotion, retirement and transfer of Sri Salil Bose, Sri Satyen Dutta, Sri Sukumar Ghosh, Sri Sudhir Pal and Aditya Sen. There are two permanent Electricians namely Sri Satyen Dutta and Sri Kabir Das posted in the said office and who are paid Rs.15,000/-/- to Rs16,000/- per month and whereas they are paid Rs.2,649/- per month. That he has been working in the bank since 1985 while other contractor employees were working for more than 18 years. He has stated that duty chart is prepared by the bank officers. He has also stated that salary was increased on regular basis and paid through vouchers by Bank. Bank used to maintain their Attendance Register. They work under the control of the bank's Engineer. He categorically denied to be an employee of M/s. M.Nath & Co.

They entered into the services of the bank after their license was verified by the bank and after interview taken by the bank. They have been engaged by the bank directly. Therefore, he has prayed for his regularization and absorption in the regular post of the bank.

The nature of work performed by him is not a seasonal in nature rather it is perennial in nature. He has been categorized as semi-skilled workman of the Bank in bipartite settlement executed between the management of the Bank and the Union.

Sri Tarun Sen, M.W.-1, Chief Manager (Engineer), Zonal Office, UCo Bank in his evidence stated that the workman who has espoused the present dispute was and is the employee of M/s. M. Nath & Co. That Bank has no control, authority and supervision over any person engaged by the contractors who was entrusted to carry out the contract job of operation and maintenance of A.C. Plant, Generator Set and electricity. Conciliation proceeding was held before the A.L.C., (Central) Calcutta between M/s. M. Nath & Co. and its employee on 09-08-2004 with regard to minimum wages.

He has stated the Bank takes Registration Certificate from A.L.C. if the labour contractors engaged by the Bank is more than 20. Contract labouers of the contractor of the UCO Bank are working as Electricians, Electrician-cum-Generator Operator. He has stated without seeing the office record that after the retirement and promotion of Salil Bose, Sudhir Pal, Paritosh Roy and M.R. Dutta who were working as Electrician cum Generator Operator the bank introduced contract labour system.

During cross examination he stated that electric maintenance, maintenance of A.C. Plant and operator and maintenance of Generator Set is required for maintenance of the office and contractors are engaged for doing such work which are not perennial in nature.

Exhibit- M-1, Exhibit-M-2, M-3, Exhibit-W-8, W-10, W-11, W-12 , W-18, W-19 and W-20 prima facie show that M/s. M. Nath & Co. was engaged by UCo Bank for operation of D.G. Set and its maintenance and services, maintenance/operation of all electrical fittings and wiring and LT switches operation at.

Those docuements further prove that union had raised an industrial dispute before the A.L.C. (central), Kolkata on 27-11-2003 for absorption and regularization of the concerned workman in the bank for working for more than 18 years under a sham contractor. Such dispute was ended with execution of Memorandum of Settlement before the A.L.C. and where the contractor employer M/s. M.Nath & Co. was directed to pay minimum wages to which the workman was entitled. It further shows the workman on execution of such settlement had dropped all his other demands including regularization. Therefore, it appears the concerned workman was not directly engaged by the Bank on contractual basis as alleged by him, rather he was an employee of the contractor of the Bank.

No doubt Exhibit-W-22 shows that bank used to pay certain amount on certain days to Sri Ranjan Nath for cleaning the toilet and not on regular basis. The Exhibit-W-21 appears to be an information slip addressed to the Security Officer of the bank seeking permission to allow SriRanjan Nath, an Electrician to do certain fitting works of fan in the record room of the bank. Then question arises, if the workman is an Electrician of the Bank as claimed by him in his oral evidence then it is not known how he was paid occasionally by bank for cleaning the toilets. Further, a question arises if the workman was recruited by the bank as alleged by him then it is not know why the bank official had to inform the Security Officer for his entry into the record room for carrying out repair works of the fans. Those documents further prove that Sri Ranjan Nath being an employee of the contractor of the bank engaged as an Electrician also used to render casual nature of job of a Sweeper to the bank.

The Exhibit-W-3 appears to be the Memorandum of Settlement dated 31-01-1979 vide which the bank had absorbed 13 persons in different categories like clerical and subordinate posts w.e.f. 02-02-1979, but it does not disclose those absorbed persons were employees of contractors of the Bank.

Exhibit-W-5 appears to be memo of Central Bank of India dated 31-12-1987 in respect of appointment of one Sri Shyamal Kar was appointed as Plant Operator / Helper in subordinate cadre, but this Tribunal is not inclined to consider those documents as it appears to be the photocopy and without any authenticity of the same, that it was indeed issued by the Central Bank.

Exhibit-W-6 appears to be appointment letter dated 16-12-2018 issued by the United Commercial Bank appointing Peon cum Generator Operator. This being a photocopy and not being an authentic document this Tribunal declined to take into consideration of the same.

Now, law is settled with regard to claim made by the contractor labours for their absorption in regular post, they have to prove that they were engaged to do perennial nature of core work in the establishment of the principal employer. The work done by them is not temporary or seasonal in nature. They discharge their duty in the establishment of the principal employer under the direct supervision and control of the principal employer, or the principal employer has the authority to take disciplinary action against them and has authority to dismiss them from the service.

It is a matter of common knowledge the core function of the bank is receiving money, keeping money of the customers and lending money. Therefore, it appears that contractors were/are engaged to provide incidental services of maintenance of electricity, Generator Set, A.C. Plants.

From the above documents it is seen the Bank used to get all services which is incidental to its business done through its contractors/service providers' employees. The concerned workman was employed by the contractor to do the job of a generator operator etc. His salary was paid by the contractor and who used to raise bills and submit before the Bank along with Log book in case of overtime allowance. No cogent and satisfactory evidence have come on record to show that bank indeed used to supervise the work of the workman and the bank has/had the authority to dismiss the workman.

It is admitted fact that the contractor had less than 20 employees working for it at the relevant time. Therefore, in view of provision of section 1 (4) (a) read with section 12 of the CLRA Act, the contractor need not obtain license for supply of employees to the principal employer. Therefore, question of obtaining license under the Act by the contractor does not arise.

However, Exhibit-W-11 shows that UCo. Bank have engaged more than 32 contractors to do different nature of works such as plumbing, lift installation, electrification works, comprehensive maintenance work, maintenance of A.C. machines and maintenance of the same, internal electric works, operation of D.G.Set, HT and Lt, OCB and water pump, maintenance of the same, electric maintenance works, telecom maintenance works, repair and renovation of building, by engaging more than 20 contractor employees in different offices which are not related to the core function of the bank. Exhibit –W-11 further shows that bank was already a registered establishment under CLRA Act.

Therefore, it is seen the concerned workman was engaged by contractor having less than 20 employees at the relevant time and question of obtaining licence by it under CLRA Act does not arise. On the other hand the Bank having engaged more than 32 contractors to do different kind of jobs at its different establishments it was/is duly registered under the CLRA Act.

It is worth to mention here that no material whatsoever has come from the side of the Union or workman, that bank is a notified establishment under section 10 of the CLRA Act. In that case the bank is not prevented from engaging contractor labour under the Act to get its incidental/non-core work done through contractors' employees.

Further, the Union has failed to produce any document to prove that the workman is/was working against the sanctioned vacant post.

Nothing has come on record that a contract between the principal employer and the contractor employer to be sham, nominal or merely a camouflage to deprive contractor's employee with permanent job and employment benefits. More so, no evidence has come on record to show under which officer of the bank the concerned workman used to work or under whose direction he used to discharge his duty/work. Therefore, it is seen that bank had no control over the employees of the contractor. Nothing has come on record to show that Bank has power to dismiss them from service after holding domestic enquiry. In fact, it has come on record salary is paid to the concerned workman by the contractors.

The work of an Electrician cannot be said to be perennial in nature. His service is required only as and when some fault occurs in the system. The nature of his job is not like that of a regular staff of Bank. So the job of an Electrician cannot be said to be perennial in nature.

Further, union failed to produced documents or examine Sri Salil Bose, Sri Sudhir Pal, Sri Paritosh Roy, Sri Kabir Das, Sri Satyen Dutta, and M.R.Dutta before this Tribunal to prove indeed they were permanent regular employees of the bank in subordinate cadre and they used to discharge the functions of Electricians, A.C. Plant Operator, DG Set Operator and Pump Operator or on their transfer, retirement or on promotion vacancy was

created and against such vacancy the bank instead of filling up the post by regular recruitment got the work done through contractors. The union miserably failed to produce documents to show there is sanctioned posts in the bank in respect of D.G.Set operator and the post is still lying vacant.

In view of Uma Debi (supra) that no regularization or absorption of contractors' employee can be made, no matter how long he might have worked and that too without following the recruitment policy and recruitment rules. The regularisation cannot be a mode of recruitment.

In view of the above, this Tribunal holds the workman being an employee of contractor employer cannot claim regularisation and absorption in the service of the bank and that too against non-existence post. This Tribunal does not find any merit in the reference. Accordingly the reference No. 31 of 2004 is dismissed. Award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1218.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (28/2004) प्रकाशित करती है।

[सं. एल-12011/45/2004- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.28/2004*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/45/2004- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer

REF. NO. 28 OF 2004

Parties : Employers in relation to the management of

UCo Bank.

AND

Their Workmen

Appearance :

On behalf of UCo Bank : Sri Pradip Kumar Upadhaya, Manager (Law).

On behalf of the Contractor M/s.Swapan Electrical Works: Absent

On behalf of the Contractor M/s. M. Nath & Co.: Absent

On behalf of the Union: Sri Ahok Kumar Panigrahi Authorised Representative

Dated: 15th June, 2023

AWARD

By Order No L-12011/45/2004 (IR)(B-II) dated 19-07-2004, the Government of India, Ministry of Labour in excise of the power conferred under sub section 1(d) and 2(A) of section 10 of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether there is any relationship of employer and employees between the management of UCO Bank and Mr. Sukumar Das, Sanjeeb Shaw and Mr. Nemai Ghosal working under the contractors M/s. M. Nath & Co. and M/s. Swapan Electric Works at UCo Bank, Head Office, Kolkata? If so, whether they are entitled for regularisation of their service in UCO Bank? If not, what relief they are entitled to?"

The facts that are necessary for determination of the above issue in gist is that UCo Bank has engaged M/s. M.Nath & Co. and M/s. Swapan Electric Works, service providers for carrying out electrical works, maintaining of electric equipment, effecting minor repairs of electric fixtures and appliances, for running and maintaining Air

Conditioning Plant at its Head Office. Therefore, those two contractors engaged the concerned workmen mentioned in the reference order as Electrician cum A.C Plant Operator/Helper, Generator Operator and for doing electric maintenance works, operation of Generator Set, Pump Set and Air Conditioning Plant.

It is the claim of the Union/workmen that they have been performing the job of operation and routine maintenance of the Central Air Conditional Plants and electrical maintenance in the establishment of the Bank for last 18 years. That they have been engaged by the Bank through the contractors in place of regular employee in the post of Electrician, Electrician cum Air Conditioning Plant Operator/Helper against the vacancy that had arisen due to retirement, promotion and transfer of regular staff. The nature of work discharged by them is semi-skilled in nature. The job which they performed is of perennial in nature and integral part of the bank.

Normal routine or function of the Bank would be jeopardized if the nature of work performed by them is discharged by a normal contract labours. They are semi-skilled workmen having vast technical experience. That they have been engaged by the Bank for doing perennial nature of job through sham contractors. That Bank had earlier absorbed Sri M. Majumder and Sri Parmananda Behera, contractor employees in the post of Clerk and Gardener cum Farash on the basis of an agreement dated 31-01-1979. That they have also alleged, the contractor whom the Bank have engaged do not have license as required under section 12 of Contractor Labours (Regulation and Abolition) Act, 1970 (hereinafter called as "CLRA Act"). Similarly, the UCo Bank too is not a registered establishment under section 7 of the CLRA Act. Therefore, the Bank has no authority to engage any contractor or engage any contractor labour to do its perennial nature of core jobs. Therefore, the union and workmen have prayed for absorption and regularization of the above three persons as regular employee of UCo Bank in view of the bipartite settlement dated 19-10-1966 which provides that Electrician and A.C. Plant Operator/ Helper as semi-skilled workmen and in the subordinate cadre of the Bank employees.

On the other hand the management of the Bank in its written statement has alleged the schedule of reference itself describe those three workmen as an employees of its contractor/service providers. Such fact ipso facto proves those workmen were never engaged by the Bank. There exit no relationship of employer and employees between the Bank and those six workmen.

It has further alleged that the Union which has espoused the dispute on behalf of the contractors' workmen, have no authority to raise dispute in respect of employees who are not regular employees of the Bank. It has also contended that those service providers through whom those employees were engaged in its establishment to do the job of electrician and operation and maintenance of A.C. Plant, Generator Set, Pump Set etc. have less than twenty employees and as such they were/are not required to obtain license under section 12 of the CLRA Act.

That no notification under section 10 of the CLRA Act, has been issued in respect of the establishment of the Bank, prohibiting it to engage any contractor laborers. It has also contended that Bank having engaged more than 20 contractor employees at its different establishments it has duly registered itself under section 7 of the CLRA Act, 1970.

It has also contended, the management of UCo Bank, utilized the services of those two contractors for temporary jobs to ensure operation and routine maintenance of the bank's A.C. Plant and Generator Set and also fixing tube lights, holders, switches etc. The management of the Bank make payment to the contractors and who in turn make payment to its employees the applicable rate of minimum wages. For extra work, additional payment is made on production of Log Book. Those employees are not under the control of the Bank. There is no sanctioned post for Electrician, generator operator and Air Conditioner Plant Operator in the Bank. Further without following the recruitment procedure the contractor workmen cannot be absorbed in the category of regular employees. Accordingly, the Bank has prayed for dismissal of the reference.

The record shows that contractor employers/service provider have failed to appear and filed their written statement and as such they have been proceeded exparte.

The Union has examined Sri Sanjib Shaw as W.W.no.1.

From the side of the workmen as many as 16 documents have been produced and which have been marked as Exhibit W-1 to W-16 on formal proof being dispensed with on 10-04-2007.

The management has examined Sri Tarun Sen, Chief Manager (Engineer) as M.W.1. Four documents have been marked as ExhibitM-1 to M-4 on formal proof being dispensed with on 10-04-2007.

Representative of the union/workmen has referred to the following decisions in support of their contention and claim statement;

1. Mukund Ltd. –vs- Mukund Staff and Officers' Association. 2004, LAB.I.C. 2791.
2. Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat –vs- Hind Mazdoor Sabha (1995 SOL Case No.234).

3. Maharashtra State Road Transport Corporation Vs Casteribe Rajya Parivahan Karmchari Sanghatana (Maharashtra SRTC) [(2009) 8 SCC 558].

4. Oil and Natural Gas Corporation Vs Krishna Gopal & Ors. (Civil Appeal No. 1878 of 2016).

5. Tinku K & Others –Vs- Union of India [WP (C) No.26934 of 2022].

On the other hand the management has referred to the following decisions in support of its case and contention:-

1. Jiban Krishna Mondal & Ors –vs- State of West Bengal reported in (2015) 12 SCC 74 (para 29).

2. State of Karnataka & Ors. –vs- Uma Devi (3) & Ors. reported kin (200^) 4 SCC 1 (para 15, 15 and 17).

3. Balwant Rai Saluja & Anr. –vs- Air India Ltd. & Ors. reported in (2014) 9 SCC 407 (para 83,87 and 89).

The Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs- Uma Debi & Ors. (2006) 4 SCC 1 has been pleased to hold "public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got down, is not precluded from making temporary appointments or engaging workers on daily wages. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time are filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other. Regular appointment must be the rule.

Equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

The Hon'ble Supreme Court of India has been pleased to quote the following from the judgment that has been passed by the Hon'ble Supreme Court in R.N. Nanjundappa vs T.Thimmaiha & Anrs (1972) 2 SCR 799-:

"Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not can go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede such proposition out be usage to introduce new head of appointment in defence of rules or it might have the effect of setting usage naught the rules"

The Hon'ble Supreme Court has been pleased to consider State of Haryana Vs Piara Singh & Ors (1992) 3, SCR 826, where the Hon'ble Supreme Court held "ordinarily speaking, the creation and abolition of posts is the prerogative of executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be can be exercised either by making rules under the proviso to Article 309 of the Constitution of (in the absence of such Rules) by issuing

Rules/ Instructions in exercised of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provision, rules and other instructions, if any, governing the condition of service".

The Hon'ble Supreme Court has been pleased to consider another judgment passed by the Hon'ble Supreme Court in Director, Institution of Management, Development, U.P. vs Smt Puspa Srivastava (1992) 3 SCR 712 where it was held "since the appointment was on purely contractual and adhoc basis on consolidated pay for a fix period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any role providing for regularisation after the period of service. A limited relief for directing the appointee to be permitted with sympathetic consideration to be continued in service till the end of concerned calendar year was issued. When the appointment was purely on adhoc and contractual basis for a limited period on the expiry of that period right to remain in the post come to an end."

The Hon'ble Supreme has further been pleased to consider Ashwini Kumar –vs- State of Bihar (1996) Supplementary (10) SCR 120 and where it was observed "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted the question of confirmation or regularisation of any irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis mean an available vacancy which is already sanctioned. If the initial entry itself is unauthorised and is not against any sanction vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.

Further, Uma Rani-vs - Registrar, Cooperative Societies and Ors.(2004) 7 SCC 112 was discussed and where it was held when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularised by the State. That regularisation is not and cannot be a mode of recruitment by any state within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularisation further more cannot be give permanence to an employee whose service are adhoc in nature. It was also held that the fact some persons had been working for a long time would not mean that they had acquired a right for regularisation."

The Hon'ble Supreme Court further held that while directing that appointments, temporary or causal, to be regularised or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain –not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on the ground alone it would not have appropriate to jettison the constitutional scheme of appointment and to take view the person who has temporarily or causal got employed should be directed to be continued permanently. By doing so it will be creating another mode of appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties who are not having equal bargaining power, that too would not enable the court to grant any relief to the employees. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, only man that some people who at least got employment temporarily, contractual or causally would not be getting even the employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compel to accept a casual or temporary employment if one incline to go in for such employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequence following from it. In other works, even while accepting the employment, the persons concerned knows the nature of his employment. It is not an appointment to a post in a real sense and the terms. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the cause of the procedure established, for making regular appointment to available post in the services of the State. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or causal employees".

Let me decide the present case on the basis of the principle enunciated in the above decisions of the Hon'ble Supreme Court.

It is undisputed fact that all the three workmen named in the reference order were engaged by two contractor/service providers of the Bank namely M/s. M. Nath & Co. and M/s. Swapan Electric Works.

From the evidence of W.W. 1 it is seen that he and Sri Nemai Ghosal are engaged as AC plant operator and Sri Sukumar Das is engaged as Electricians cum Generator Operator at UCo Bank India Exchange Place office. They were/have been working against the permanent vacancies created due to promotion, retirement and transfer of Sri Salil Bose, Sri Kabir Das and Sri Satyen Dutta. There are two permanent Electricians posted in the said office and who are paid Rs.6,000/- to Rs.,7,000/- per month and whereas they are paid Rs.2,649/- per month. That

he has been working in the bank since 1998 while other contractor employees were working for more than 18 years. He has stated that duty chart is prepared by the bank officers. He has also stated that salary was increased on regular basis and paid through vouchers by Bank. Bank used to maintain their Attendance Register. They work under the control of the bank's Engineer.

He has further stated they do not work under any contractor named M/s. M. Nath & Co. and M/s. Swapan Electric Works. They entered into the services of the bank after their license was verified by the bank and after interview taken by the bank. They have been engaged by the bank directly. Therefore, he has prayed for regularization and absorption of all three workmen who have espoused the dispute in the regular post of the bank.

The nature of work performed by them is not a seasonal in nature rather it is perennial in nature. They have been categorized as semi-skilled workmen of the Bank in bipartite settlement executed between the management of the Bank and the Union. That they are no more in service since 2018.

Sri Tarun Sen, M.W.-1, Chief Manager (Engineer), Zonal Office, UCo Bank in his evidence stated that these workmen who have espoused the present dispute were and are the employees of M/s. Swapan Electric Works and Mr. M. Nath & Co. That Bank has no control, authority and supervision over any person engaged by the contractors who was entrusted to carry out the contract job of operation and maintenance of A.C. Plant, Generator Set and electricity. Conciliation proceeding was held before the A.L.C., (Central) Calcutta between M/s. Swapan Electric Works and M/s. M.Nath & Co. and their employees on 09-08-2004 with regard to minimum wages.

During cross examination he expressed his ignorance about whether the contractors engaged by the bank are the licensed contractors under CLRA Act or not, whether bank is a registered establishment under the said Act. Further, he has stated that without seeing the official records he was unable to say whether those workmen working under the contractors were/are paid minimum wages or not or whether those persons were engaged by the bank through contractors against a permanent vacancy or that whether there is a valid contract between the bank and those contractors or not.

Exhibit-W-3, W-6, W-7, W-8, W-9, W-10, W-14, and W-15, prima facie shows that M/s. M. Nath & Co. and M/s. Swapan Electric Works were engaged by UCo Bank for electrical maintenance work on third floor area common passage of first and second floor staircase and lift and for operation and routine maintenance of five unit of central A.C. Plant at its office at third floor India Exchange Place, Kolkata. Exhibit-W-1 and Exhibit-M-5 prima facie show, union had raised an industrial dispute before the A.L.C. (central), Kolkata on 27-11-2003 on the basis of the order passed by the Hon'ble High Court in W.P. No.378 of 2000 on 22-05-2001, where the Hon'ble High Court declined to entertain the application made by Sri Uttam Kumar Seal for his absorption and regularisation in the bank and where the Union has admitted that those three workmen named in the reference order were indeed the employees of M/s. M. Nath & Co. and M/s. Swapan Electric Works, two contractors of UCo Bank. Those two exhibited documents further show the union has raised the dispute before A.L.C. (Central) in respect of those three employees demanding their regularization alleging that they have been shown as an employee of sham contractors by the management of the Bank. Those employees are working for the bank for more than 18 years. Exhibit-M-4 shows such dispute was ended in settlement after the wage of workman Sri Sukumar Das was fixed at the rate of Rs.88.30 per day. That he dropped his other demands made against his employer M/s. M.Nath & Co. in his representation dated 19-05-2004.

The Exhibit-W-2 appears to be the Memorandum of Settlement dated 31-01-1979 vide which the bank had absorbed 13 persons in different categories like clerical and subordinate posts w.e.f. 02-02-1979, but it does not disclose those absorbed persons were employees of contractors of the Bank.

Exhibit-W-3 appears to be petition of Swapan Electric Works dated 16.04.2003 to the A.L.C. informing about revision of wages of its employees working for UCO Bank

Exhibit-W-4 appears to be memo of Central Bank of India dated 31-12-1987 in respect of appointment of one Sri Shyamal Kar was appointed as Plant Operator / Helper in subordinate cadre, but this Tribunal is not inclined to consider those documents as it appears to be the photocopy and without any authenticity of the same, that it was indeed issued by the Central Bank.

Exhibit-W-4/1 appears to be appointment letter dated 16-12-2018 issued by the United Commercial Bank appointing Peon cum Generator Operator. This being a photocopy and not being an authentic document this Tribunal declined to take into consideration of the same.

Now, law is settled with regard to claim made by the contractor labours for their absorption in regular post they have to prove that they were engaged to do perennial nature of core work in the establishment of the principal employer. The work done by them is not temporary or seasonal in nature. They discharge their duty in the establishment of the principal employer under the direct supervision and control of the principal employer, or the principal employer has the authority to take disciplinary action against them and has authority to dismiss them from the service.

It is a matter of common knowledge the core function of the bank is receiving money, keeping money of the customers and lending money. Therefore, it appears that contractors were/are engaged to provide incidental services of maintenance of electricity, Generator Set, A.C. Plants.

The witness of the union in his evidences has stated that they were interviewed, their licenses were checked by the bank official and thereafter they were verbally asked by the bank official to report for the duty. But Exhibit-W-6 & W-7 prove that they are the employees of contractors.

Thus, Exhibit- M-5, M-2, M-3 and Exhibit-M-1 leaves no room for doubt that three concerned workmen are/were employees of M/s. M.Nath & Co., and M/s. Swapan Electric Works contractor/service provider engaged by the bank for electric maintenance works and for maintenance of five A.C. units and they were not directly engaged by the Bank on contractual basis. Those employees were under the direct employment of the contractors.

From the above documents it is seen the Bank used to get all services which is incidental to its business done through its contractors/service providers' employees. Those employees were employed by the contractors to do the job of electrician and A.C. Plant Operator. Their salary was paid by the contractor and who used to raise bills and submit before the Bank along with Log book in case of overtime allowance. No cogent and satisfactory evidence have come on record to show that bank indeed used to supervise the work of those workmen and the bank has/had the authority to dismiss those workmen.

It is admitted fact that both the contractors had less than 20 employees working for them at the relevant time. Therefore, in view of provision of section 1 (4) (a) read with section 12 of the CLRA Act, those two contractors need not obtain license for supply of employees to the principal employer. Therefore, question of obtaining license under the Act by those two contractors do not arise.

However, Exhibit-W-12 shows that UCo. Bank have engaged more than 32 contractors to do different nature of works such as plumbing, lift installation, electrification works, comprehensive maintenance work, maintenance of A.C. machines and maintenance of the same, internal electric works, operation of D.G.Set, HT and Lt, OCB and water pump, maintenance of the same, electric maintenance works, telecom maintenance works, repair and renovation of building, by engaging more than 20 contractor employees in different offices which are not related to the core function of the bank. Exhibit –W-12 further shows that bank was already a registered establishment under CLRA Act.

Therefore, it is seen the concerned workmen were engaged by contractors having less than 20 employees at the relevant time and question of obtaining licences by them under CLRA Act do not arise. On the other hand the Bank having engaged more than 32 contractors to do different kind of jobs at its different establishments it was/is duly registered under the CLRA Act.

It is worth to mention here that no material whatsoever has come from the side of the Union or workmen, that bank is a notified establishment under section 10 of the CLRA Act. In that case the bank is not prevented from engaging contractor labour under the Act to get its incidental/non-core work done through contractors' employees.

Further, the Union has failed to produce any document to prove that those three workmen are/were working against the sanctioned vacant posts.

Exhibit-W-8 and W-9 show, the principal employer had supplied the schedule of work to be done by the contractor and it was the contractor to get the work done as per the schedule given by the bank. Therefore, it is seen that the principal employer had no control over the work to be done by the contractor or by his employees and which prove the contractor's employees were not under the control of the management of the bank or their work was supervised by the authority of the bank.

Nothing has come on record that a contract between the principal employer and the contractor employer be sham, nominal or merely a camouflage to deprive contractor's employees with permanent job and employment benefits. More so, no evidence has come on record to show under which officer of the bank those employees used to work or under whose direction they used to discharge their duty/work. Therefore, it is seen that bank had no control over the employees of the contractors. Nothing has come on record to show that Bank has power to dismiss them from service after holding domestic enquiry. In fact, Exhibit-M-5, W-6 and W-7 prima facie prove salary is not paid to those concerned workmen by the bank but by the contractors.

The work of an Electrician cannot be said to be perennial in nature. Their service is required only as and when there is a fault occurs in the system. The nature of their job is not like that of a regular staff of Bank. Even the job of an A.C. Plant operator cannot be said to be perennial in nature as during winter season there is no need to operate AC plant. So the job of AC plant operator and electrician cannot be said to be perennial in nature, but necessary and for which purpose such service appears to have been sourced out to private contractors by the Bank.

Further, union failed produced documents or examine Sri Salil Bose, Sri Satyen Dutta and Sri Kabir Das before this Tribunal to prove indeed they were permanent regular employees of the bank in subordinate cadre and they used to discharge the functions of Electricians and A.C. Plant Operator or on their transfer, retirement or promotion vacancy was created at India Exchange Place Office of the Bank and against such vacancy the bank instead of filling up the post by regular recruitment got the work done through contractors. The union miserably failed to produce documents to show there is sanctioned posts in the bank in respect of the work done by the concerned contractors' employees and those posts are still lying vacant.

It is worth to mention here along with this reference case the Tribunal has disposed of other five cases filed by the same union of the bank seeking the same relief in respect of 15 contractor employees and in all those cases the union has mentioned names of those three persons as permanent employees of bank and on their retirement, promotion and transfer post of Electrician, A.C. Plant Operator, DG Set Operator, Pump Operator, Water Treatment Plant Operator etc. are lying vacant and which the bank has failed to fill up by way of regular recruitment.

So, here a question arises, how those 15 workmen could claim regularization and absorption against few number of vacancies in the concerned post? For the sake of argument even if we assume indeed there are three permanent posts for the above mentioned job lying vacant still it is not known how 15 persons could claim permanency against three vacant posts.

Be that as it may, in view of Uma Debi (supra) that no regularization or absorption of contractors' employee can be made, no matter how long they might have worked and that too without following the recruitment policy and recruitment rules. The regularisation cannot be a mode of recruitment.

In view of the above, this Tribunal holds the workmen being the employees of contractor employers cannot claim regularisation and absorption in the service of the bank and that too against non-existence post. This Tribunal does not find any merit in the reference. Accordingly the reference No. 28 of 2004 is dismissed. Award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1219.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (29/2004) प्रकाशित करती है।

[सं. एल-12011/44/2004-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.29/2004*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/44/2004- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 29 OF 2004

Parties : Employers in relation to the management of

UCo Bank.

AND

Their Workmen

Appearance :

On behalf of UCo Bank : Sri Pradip Kumar Upadhyay, Manager (Law).

On behalf of the Contractor M/s.Swapan Electrical Works: Absent

On behalf of the Contractor M/s. M. Nath & Co. : Absent

On behalf of the Union : Sri Ashok Kumar Panigrahi, Authorised Representative

Dated:15th June, 2023

AWARD

By Order No L-12011/44/2004 (IR)(B-II) dated 19-07-2004, the Government of India, Ministry of Labour, in excise of the power conferred under sub section 1(d) and 2(A) of section of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether there is any relationship of employer and employee between the management of UCO Bank and Sk. Mubarak Ali, Sri Swapan Chakraborty, Sri Indrajit Mondal, Sri Dipen Mondal, Sri Ashok Kumar Roy and Sri Uttam Kumar Seal working under the contractors M/s. M. Nath & Co. And M/s. Swapan Electric Works at UCo Bank, Head Office, Kolkata. If so, whether they are entitled for regularisation of their services in UCo Bank? If not, what relief they are entitled to?"

The facts that are necessary for determination of the above issue in gist is that UCo Bank has engaged M/s. M.Nath & Co. and M/s. Swapan Electric Works, service providers for carrying out electrical works, maintaining of electric equipment, effecting minor repairs of electric fixtures and appliances, for running and maintaining Air Conditioning Plant at its Head Office. Therefore, those two contractors engaged the concerned workmen mentioned in the reference order as Electrician cum A.C Plant Operator/Helper, Generator Operator and for doing electric maintenance works, operation of Generator Set, Pump Set and Air Conditioning Plant.

It is the claim of the Union/workmen that they have been performing the job of operation and routine maintenance of the Central Air Conditional Plants and electrical maintenance in the establishment of the Bank since 1986 and 1989. That they have been engaged by the Bank through the contractors in place of regular employee in the post of Electrician, Electrician cum Air Conditioning Plant Operator/Helper against the vacancy that had arisen due to death, promotion and transfer of regular staff. The nature of work discharged by them is semi-skilled in nature. The job which they performed is of perennial in nature and integral part of the bank.

Normal routine or function of the Bank would be jeopardized if the nature of work performed by them is discharged by a normal contract labours. They are semi-skilled workmen having vast technical experience. That they have been engaged by the Bank for doing perennial nature of job through sham contractors. That Bank had earlier absorbed Sri M. Majumder and Sri Parmananda Behera, contractor employees in the post of Clerk and Gardener cum Farash on the basis of an agreement dated 31-01-1979. That they have also alleged, the contractors whom the Bank have engaged do not have license as required under section 12 of Contractor Labours (Regulation and Abolition) Act, 1970 (hereinafter called as "CLRA Act"). Similarly, the UCo Bank too is not a registered establishment under section 7 of the CLRA Act. Therefore, the Bank has no authority to engage any contractor or engage any contractor labour to do its perennial nature of core jobs. Therefore, the union and workmen have prayed for absorption and regularization of the above six persons as regular employee of UCo Bank in view of the bipartite settlement dated 19-10-1966 under which Electrician and A.C. Plant Operator/ Helper are declared semi-skilled workmen in the subordinate cadre of the Bank employees.

On the other hand the management of the Bank in its written statement has alleged the schedule of reference itself describe those six workmen as an employees of its contractor/service providers. Such fact ipso facto proves those workmen were never engaged by the Bank. There exit no relationship of employer and employees between the Bank and those six workmen.

It has further alleged that the Union which has espoused the dispute on behalf of the contractors' workmen, have no authority to raise dispute in respect of employees who are not regular employees of the Bank. It has also contended that those service providers through whom those employees were engaged in its establishment to do the job of electrician and maintenance of A.C. Plant, Generator Set, Pump Set etc. have less than twenty employees and as such they were/are not required to obtain license under section 12 of the CLRA Act.

That no notification under section 10 of the CLRA Act, has been issued in respect of the establishment of the Bank, prohibiting it to engage any contractor laborers. It has also contended that Bank having engaged more than 20 contractor employees at its different establishments it has duly registered itself under section 7 of the CLRA Act, 1970.

It has also contended, the management of UCo Bank, utilized the services of those two contractors for temporary jobs to ensure operation and routine maintenance of the bank's A.C. Plant and Generator Set and also fixing tube lights, holders, switches etc. The management of the Bank make payment to the contractors and who in turn make payment to its employees at applicable rate of minimum wages. For extra work, additional payment is made

on production of Log Book. Those employees are not under the control of the Bank. There is no sanctioned post of Electrician and Air Conditioner Plant Operator in the Bank. Further without following the recruitment procedure the contractor workmen cannot be absorbed in the category of regular employees. Accordingly, the Bank has prayed for dismissal of the reference.

The record shows that contractor employers/service provider have failed to appear and filed their written statement and as such they have been proceeded exparte.

The Union has examined Sri Uttam Kumar Sil, since deceased during the pendency of this case as W.W.no.1 and Sk. Mubarak Ali as W.W.2.

From the side of the workmen as many as 18 documents have been produced and which have been marked as Exhibit W-1 to W-18 on formal proof being dispensed with on 18-01-2007.

Similarly, the management has examined Sri Tarun Sen, Chief Manager (Engineer) as M.W.1. and produced three documents and have been marked as ExhibitM-1 to M-3 on formal proof being dispensed with on 18-01-2007.

Representative of the union/workmen has referred to the following decisions in support of their contention and claim statement;

1. Mukund Ltd. –vs- Mukund Staff and Officers' Association. 2004, LAB.I.C. 2791.
2. Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat –vs- Hind Mazdoor Sabha (1995 SOL Case No.234).
3. Maharashtra State Road Transport Corporation Vs Casteribe Rajya Parivahan Karmchari Sanghatana (Maharashtra SRTC) [(2009) 8 SCC 558].
4. Oil and Natural Gas Corporation Vs Krishna Gopal & Ors. (Civil Appeal No. 1878 of 2016).
5. Tinku K & Others –Vs- Union of India [WP (C) No.26934 of 2022].

On the other hand the management has referred to the following decisions in support of its case and contention:-

1. Jiban Krishna Mondal & Ors –vs- State of West Bengal reported in (2015) 12 SCC 74 (para 29).

2.State of Karnataka & Ors. –vs- Uma Devi (3) & Ors. reported kin (200^) 4 SCC 1 (para 15, 15 and 17).

3.Balwant Rai Saluja & Anr. –vs- Air India Ltd. & Ors. reported in (2014) 9 SCC 407 (para 83,87 and 89).

The Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs- Uma Debi & Ors. (2006) 4 SCC 1 has been pleased to hold "public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got down, is not precluded from making temporary appointments or engaging workers on daily wages. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time are filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other. Regular appointment must be the rule.

Equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. There is nothing in the Constitution which prohibits such engaging of

persons temporarily or on daily wages, to meet the needs of the situation. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

The Hon'ble Supreme Court of India has been pleased to quote the following from the judgment that has been passed by the Hon'ble Supreme Court in R.N. Nanjundappa vs T.Thimmaiha & Anrs (1972) 2 SCR 799-:

"Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not can go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede such proposition out be usage to introduce new head of appointment in defence of rules or it might have the effect of setting usage naught the rules"

The Hon'ble Supreme Court has been pleased to consider State of Haryana Vs Piara Singh & Ors (1992) 3, SCR 826, where the Hon'ble Supreme Court held "ordinarily speaking, the creation and abolition of posts is the prerogative of executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be can be exercised either by making rules under the proviso to Article 309 of the Constitution of (in the absence of such Rules) by issuing Rules/ Instructions in exercised of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provision, rules and other instructions, if any, governing the condition of service".

The Hon'ble Supreme Court has been pleased to consider another judgment passed by the Hon'ble Supreme Court in Director, Institution of Management, Development, U.P. vs Smt Puspa Srivastava (1992) 3 SCR 712 where it was held "since the appointment was on purely contractual and adhoc basis on consolidated pay for a fix period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any role providing for regularisation after the period of service. A limited relief for directing the appointee to be permitted with sympathetic consideration to be continued in service till the end of concerned calendar year was issued. When the appointment was purely on adhoc and contractual basis for a limited period on the expiry of that period right to remain in the post come to an end."

The Hon'ble Supreme has further been pleased to consider Ashwini Kumar –vs- State of Bihar (1996) Supplementary (10) SCR 120 and where it was observed "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted the question of confirmation or regularisation of any irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis mean an available vacancy which is already sanctioned. If the initial entry itself is unauthorised and is not against any sanction vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.

Further, Uma Rani-vs - Registrar, Cooperative Societies and Ors.(2004) 7 SCC 112 was discussed and where it was held when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularised by the State. That regularisation is not and cannot be a mode of recruitment by any state within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularisation further more cannot be give permanence to an employee whose service are adhoc in nature. It was also held that the fact some persons had been working for a long time would not mean that they had acquired a right for regularisation."

The Hon'ble Supreme Court further held that while directing that appointments, temporary or causal, to be regularised or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain –not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on the ground alone it would not have appropriate to jettison the constitutional scheme of appointment and to take view the person who has temporarily or causal got employed should be directed to be continued permanently. By doing so it will be creating another mode of appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties who are not having equal bargaining power, that too would not enable the court

to grant any relief to the employees. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, only man that some people who at least got employment temporarily, contractual or causally would not be getting even the employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compel to accept a casual or temporary employment if one incline to go in for such employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequence following from it. In other works, even while accepting the employment, the persons concerned knows the nature of his employment. It is not an appointment to a post in a real sense and the terms. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the cause of the procedure established, for making regular appointment to available post in the services of the State. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or causal employees".

Let me decide the present case on the basis of the principle enunciated in the above decisions of the Hon'ble Supreme Court.

It is undisputed fact that all the six workmen named in the reference order were engaged by two contractor/service providers of the Bank namely M/s. M. Nath & Co. and M/s. Swapan Electric Works.

From the evidence of W.W. 1 it is seen that Sri Uttam Kumar Sil and one Sri Ashok Kumar Roy were engaged as Electricians in the UCo Bank head office. That Sk. Mubarak Ali, Sri Indrajit Mondal, Sri Swapan Chakraborty and Sri Dipen Mondal were engaged to work as Electrician cum Air Conditioning Plant Operators. Generator Set and A.C. Plant are owned by the Bank. They were/have been working against the permanent vacancies created due to death, retirement and transfer of Sri Salil Bose, Sri Sudhir Pal, Sri Sukumar Ghosh and Sri Satyen Dutta. There is a permanent Electrician named Sri Prabir Das. That he was working in the bank since 1988 while other contractor employees were working since 1988-89. He has stated that duty chart is prepared by the bank officers. He has also stated that salary was increased on regular basis. Attendance Register is used to be maintained by the bank but it was discontinued after they moved High Court against the bank.

He has further stated they do not work under any contractor named M/s. M. Nath & Co. and M/s. Swapan Electric Works. They entered into the services of the bank after their license was verified by the bank and after interview taken by the bank. Unfortunately, the management could not cross examine him as he has expired on 02-08-2009. Therefore, such part evidence of W.W.no1 is not considered for determination for the present dispute.

Sk. Mubarak Ali W.W.no.2who in his evidence-in-chief on affidavit has disposed that he is an Electrician cum A.C. Plant Operator working in the UCo Bank, head office. Other five employees also work at UCo Bank, Head Office as Electrician cum Generator Operator. They work for 12 hours a day. They are not paid over time for the extra works. They work under the control of the bank's Engineer. The nature of work performed by them is not a seasonal in nature rather it is perennial in nature. They have been categorized as semi-skilled workmen of the Bank in bipartite settlement executed between the management of the Bank and the Union. Their Attendance was recorded by the bank but after they moved to High Court the bank discontinued the attendance register. They were never employed by any contractor. They have been engaged by the bank directly. Therefore, he has prayed for regularization and absorption of all six workmen who have espoused the dispute in the regular post of Electrician in the bank. He nowhere in his evidence-in-chief on affidavit stated that he and other five persons were employees of the contractors. However, during cross examination he has admitted that he is an employee of M/s. Swapan Electric Works since 2000. At the same time he has stated that he has been working in the Bank since 1987 on the basis of the vacancy notice given in the notice board. That he had not filed any application for appointment but bank official interviewed him and 16 other persons. After interview Mr. B. Dutta, Chief Engineer (Electrical) informed him to join the duty. He was not given any formal letter. He was not given any I.D. Card. He was paid salary through voucher and salary was never credited in his bank account. When he moved the High Court for his regularisation in 2000, then bank inducted some contractors.

Sri Tarun Sen, M.W.-1, Chief Manager (Engineer), Zonal Office, UCo Bank in his evidence stated that these workmen who have espoused the present dispute were and are the employees of M/s. Swapan Electric Works and Mr. M. Nath & Co. That Bank has no control, authority and supervision over any person engaged by the contractors who was entrusted to carry out the contract job of operation and maintenance of A.C. Plant, Generator Set and electricity. Conciliation proceding was held before the A.L.C., (Central) Calcutta between M/s. Swapan Electric Works and its employees on 09-08-2004 with regard to minimum wages.

During cross examination he expressed his ignorance about whether the contractors engaged by the bank are the licensed contractors under CLRA Act or not, whether bank is a registered establishment under the said Act. Further, he has stated that without seeing the official records he was unable to say whether those workmen working under the contractors were/are paid minimum wages or not or whether those persons were engaged by

the bank through contractors against a permanent vacancy or that whether there is a valid contract between the bank and those contractors or not.

Exhibit- M-1 Exhibit-W-7 , W-8 , W-9, W-10 and W-11, prima facie shows that M/s. M. Nath & Co. was engaged by UCo Bank for operation/ services of three D.G. Sets, water pumps LT and HT circuit breaker, for operation of water treatment plant and all switches of Head Office since 1986. Exhibit-M-2 further shows the contract with M/s. M. Nath & Co. was continued even in the year 2004.

Exhibit-W-1 and Exhibit-M-4 show that M/s. Swapan Electric Works was a contractor of the bank for operation and routine maintenance of Central A.C. Plant at Head Office of Bank since 1996.

Exhbiit-W-12 prima facie shows, union had raised an industrial dispute before the A.L.C. (central), Kolkata on 27-11-2003 on the basis of the order passed by the Hon'ble High Court in W.P. No.378 of 2000 on 22-05-2001, where the Hon'ble High Court declined to entertain the application made by Sri Uttam Kumar Seal for his absorption and regularisation in the bank and the Union has admitted that those six workmen named in the reference order were indeed the employees of M/s. M. Nath & Co. and M/s. Swapan Electric Works, two contractors of UCo Bank.

The Exhibit-W-13 appears to be the Memorandum of Settlement dated 31-01-1979 vide which the bank had absorbed 13 persons in different categories like clerical and subordinate posts w.e.f. 02-02-1979, but it does not disclose those absorbed persons were employees of contractors of the Bank.

Exhibit-W-13 appears to be petition of Swapan Electric Works dated 16.04.2003 to the Bank for revision of wages of its employees

Exhibit-W-15 appears to be memo of Central Bank of India dated 31-12-1987 in respect of appointment of one Sri Shyamal Kar was appointed as Plant Operator / Helper in subordinate cadre, but this Tribunal is not inclined to consider those documents as it appears to be the photocopy and without any authenticity of the same, that it was indeed issued by the Central Bank.

Exhibit-W-16 appears to be appointment letter dated 16-12-2018 issued by the United Commercial Bank appointing Peon cum Generator Operator. This being a photocopy and not being an authentic document this Tribunal declined to take into consideration of the same.

Now, law is settled with regard to claim made by the contractor labours for their absorption in regular post they have to prove that they were engaged to do perennial nature of core work in the establishment of the principal employer. The work done by them is not temporary or seasonal in nature. They discharge their duty in the establishment of the principal employer under the direct supervision and control of the principal employer, or the principal employer has the authority to take disciplinary action against them and has authority to dismiss them from the service.

It is a matter of common knowledge the core function of the bank is receiving money, keeping money of the customers and lending money. Therefore, it appears that contractors were/are engaged to provide incidental services of maintenance of electricity, Generator Set, A.C. Plants.

The witnesses of the union in their evidences have stated that they were interviewed, their licenses were checked by the bank official and thereafter they were verbally asked by the bank official to report for the duty. That five of them have been working since 1986 onwards for the bank, but they have failed to produce copy of notice displayed in the notice board, notifying the vacancy of the post of generator operator, A.C.plant operator, water treatment plant operator and electrician and basis of which they had applied for the post. Question arises when they could bring the agreement of contract entered between those two contractors and the bank dated 1986, then it is expected that they should also be able to produce vacancy notification published by the bank and displayed on the notice board and on the basis of which they had applied and recruited by the Bank.

On the other hand, Exhibit-M-3 prove that a Memorandum of Settlement was entered between M/s. M. Nath & Co. and its workmen Sri Uttam Seal (since deceased) and Sri Ashok Kumar Roy, Operator of D.G.Set and Pump Operator at water treatment plant at UCo Bank, Head Office on 09-08-2004 over issue of deprivation of minimum wages to them and it was agreed between the employer and employees that employer would pay Rs.88.30 to those two employees w.e.f. 01-06-2004 and hereby those two employees dropped all their demands made in their representation dated 19-05-2004.

Thus, Exhibit- M-3 leaves no room for doubt that Sri Uttam Kumar Seal and Sri Ashok Kumar Ray were employees of M/s. M.Nath & Co., contractor/service provider engaged by the bank for running D.G. Set and pump machines and they were not directly engaged by the Bank on contractual basis. Those employees were under the direct employment of the contractors.

On the other hand debit vouchers issued by M/s. Swapan Electric Works, show payment of salary to Sri Indrajit Mondal, Sk. Mubarak Ali, Sri Dipen Mondal and Sri Swapan Chakraborty. M/s. Swapan Electric Works used to submit bills along with Log Book before the management of the bank for payment. Those documents also prove that salary were paid to the other four workmen by their employer M/s. Swapan Electric Works and not by the Bank.

From the above documents it is seen the Bank used to get all services which is incidental to its business done through its contractors/service providers' employees. Those employees were employed by the contractors to do the job of electrician and A.C. Plant Operator, pump operator, generator operator etc. Their salary was paid by the contractor and who used to raise bills and submit before the Bank along with Log book in case of overtime allowance. No cogent and satisfactory evidence have come on record to show that bank indeed used to supervise the work of those workmen and the bank has/had the authority to dismiss those workmen.

It is admitted fact that both the contractors had less than 20 employees working for them at the relevant time. Therefore, in view of provision of section 1 (4) (a) read with section 12 of the CLRA Act, those two contractors need not obtain license for supply of employees to the principal employer. Therefore, question of obtaining license under the Act by those two contractors do not arise.

However, Exhibit-W-4 shows that UCo. Bank have engaged more than 32 contractors to do different nature of works such as plumbing, lift installation, electrification works, comprehensive maintenance work, maintenance of A.C. machines and maintenance of the same, internal electric works, operation of D.G.Set, HT and Lt, OCB and water pump, maintenance of the same, electric maintenance works, telecom maintenance works, repair and renovation of building, by engaging more than 20 contractor employees in different offices which are not related to the core function of the bank. Exhibit –W-3 further shows that bank was already a registered establishment under CLRA Act.

Therefore, it is seen the concerned workmen were engaged by contractors having less than 20 employees at the relevant time and question of obtaining licences by them under CLRA Act do not arise. On the other hand the Bank having engaged more than 32 contractors to do different kind of jobs at its different establishments it was/is duly registered under the CLRA Act.

It is worth to mention here that no material whatsoever has come from the side of the Union or workmen, that bank is a notified establishment under section 10 of the CLRA Act. In that case the bank is not prevented from engaging contractor labour under the Act to get its incidental/non-core work done through contractors' employees.

Further, the Union has failed to produce any document to prove that those six workmen are working against the sanctioned vacant posts.

Exhibit-W-2 shows, the principal employer had supplied the schedule of work for operation of all the Central A.C. Plants at Head Office to the contractor employer and it was the contractor to get the work done as per the schedule given by the bank. Therefore, it is seen that the principal employer had no control over the work to be done by the contractor or by his employees and which prove the contractor's employees were not under the control of the management of the bank or their work was supervised by the authority of the bank.

Nothing has come on record that a contract between the principal employer and the contractor employer to be sham, nominal or merely a camouflage to deprive contractor's employees with permanent job and employment benefits. More so, no evidence has come on record to show under which officer of the bank those employees used to work or under whose direction they used to discharge their duty/work. Therefore, it is seen that bank had no control over the employees of the contractors. Nothing has come on record to show that Bank has power to dismiss them from service after holding domestic enquiry. In fact, Exhibit-M-3 prima facie prove salary is not paid to those concerned workmen by the bank but by the contractors.

The work of an Electrician cannot be said to be perennial in nature. Their service is required only as and when there is a fault occurs in the system. The nature of their job is not like that of a regular staff of Bank. Even the job of an A.C. Plant operator cannot be said to be perennial in nature as during winter season there is no need to operate AC plant. So the job of AC plant operator, electrician and generator operator cannot be said to be perennial in nature.

Further, union failed to produced documents or examine Sri Salil Bose, Sri Sudhir Pal, Sri Sukumar Ghosh, Sri Satyen Dutta and Sri Aditya Sen before this Tribunal to prove indeed they were permanent regular employees of the bank in subordinate cadre and they used to discharge the functions of Electricians, A.C. Plant Operator, DG Set Operator and Pump Operator or on their transfer, retirement or in service death vacancy was created at Head Office of the Bank and against such vacancy the bank instead of filling up the post by regular recruitment got the work done through contractors. The union miserably failed to produce documents to show there is sanctioned

posts in the bank in respect of the work done by the concerned contractors' employees and those posts are still lying vacant.

In view of Uma Debi (supra) that no regularization or absorption of contractors' employee can be made, no matter how long they might have worked and that too without following the recruitment policy and recruitment rules. The regularisation cannot be a mode of recruitment.

In view of the above, this Tribunal holds the workmen being the employees of contractors employer cannot claim regularisation and absorption in the service of the bank and that too against non-existence posts. This Tribunal does not find any merit in the reference. Accordingly the reference No. 29 of 2004 is dismissed. Award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का.आ. 1220.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (30/2004) प्रकाशित करती है।

[सं. एल-12011/43/2004-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.30/2004*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/43/2004- IR(B.II)]
SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer

REF. NO. 30 OF 2004

Parties : Employers in relation to the management of

UCO Bank.

AND

Their Workman

Appearance :

On behalf of UCO Bank : Sri Pradip Kr. Upadhyay, Manager (Law).

On behalf of the Contractor M/s. M. Nath & Co. : Absent

On behalf of the Union/Workman: Sri A.Panigrahi, Authorised Representative.

Dated: 15th June, 2023

AWARD

By Order No L-12011/43/2004 (IR)(B-II) dated 19-07-2004, the Government of India, Ministry of Labour in excise of the power conferred under sub section 1(d) and 2(A) of section 10 of the Industrial Dispute Act, 1947 has referred the following dispute for adjudication by this Tribunal: –

"Whether there is any relationship of employer and employees between the management of UCO Bank and Mr. Tapu Kumar Dey working under the contractors M/s. M. Nath & Co. at UCO Bank, Head Office, Kolkata? If so, whether he is entitled for regularisation of his service in UCO Bank? If not, what relief he is entitled to?"

The facts that are necessary for determination of the above issue in gist is that UCo Bank has engaged M/s. M.Nath & Co. service provider for operation and maintenance of DG Set and operation of L.T. Switches minor repairs of electric fixtures and appliances at its Office situated at 16-A, B.T.M.Sarani, Kolkata- 700 001. Therefore, the contractor engaged the concerned workman mentioned in the reference order as a Generator Operator.

It is the claim of the Union/workman that he has been performing the job of Generator Operator in the establishment of the Bank for more than 18 years. He was engaged by the Bank through the contractor in place of a vacant post of Generator Operator/Electrician arisen due to death, promotion and transfer of regular staff. The nature of work discharged by him is semi-skilled in nature. The job which he performed is of perennial in nature and integral part of the bank.

Normal routine or function of the Bank would be jeopardized if the nature of work performed by him is discharged by a normal contract labour. He is a semi-skilled workman having vast technical experience. He has been engaged by the Bank for doing perennial nature of job through sham contractor. That Bank had earlier absorbed Sri M. Majumder and Sri Parmananda Behera, contractor employees in the post of Clerk and Gardener cum Farash on the basis of an agreement dated 31-01-1979. That the contractor whom the Bank has engaged does not have license as required under section 12 of Contractor Labours (Regulation and Abolition) Act, 1970 (hereinafter called as "CLRA Act"). Similarly, the UCo Bank too is not a registered establishment under section 7 of the CLRA Act. Therefore, the Bank has no authority to engage any contractor or engage any contractor labour to do its perennial nature of core jobs. Therefore, the union and workman have prayed for absorption and regularization of the Sri Tapu Kumar Dey as regular employee of UCo Bank in view of the bipartite settlement dated 19-10-1966, under which Electrician and A.C. Plant Operator, Generator Operator and Helper are declared as semi-skilled workmen in the subordinate cadre of the Bank employees.

On the other hand the management of the Bank in its written statement has alleged the schedule of reference itself describe the workman as an employee of its contractor/service provider. Such fact ipso facto proves the workman was never engaged by the Bank. There exit no relationship of employer and employee between the Bank and the workman.

It has further alleged that the Union which has espoused the dispute on behalf of the contractors' workman, has no authority to raise dispute in respect of employee who is not regular employee of the Bank. It has also contended that service provider through whom the workman was engaged in its establishment to do the job of Generator Operator has less than twenty employees and as such it is not required to obtain license under section 12 of the CLRA Act.

That no notification under section 10 of the CLRA Act, has been issued in respect of the establishment of the Bank, prohibiting it to engage any contractor laborers. It has also contended that Bank having engaged more than 20 contractor employees at its different establishments it has duly registered itself under section 7 of the CLRA Act, 1970.

It has also contended, the management of UCo Bank, utilized the services contractors for temporary jobs to ensure operation and routine maintenance of the bank's A.C. Plant and Generator Set and also fixing tube lights, holders, switches etc. The management of the Bank make payment to the contractors and who in turn make payment to its employees at applicable rate of minimum wages. For extra work, additional payment is made on production of Log Book. Those employees are not under the control of the Bank. There is no sanctioned post of Generator Operator in the Bank. Further without following the recruitment procedure the contractor workman cannot be absorbed in the category of regular employee. Accordingly, the Bank has prayed for dismissal of the reference.

The record shows that contractor employer/service provider has failed to appear and filed its written statement and as such it has been proceeded exparte.

The Union has declined to adduce any oral evidence as reflected from order dated 18-08-2010. However, 14 documents have been marked as Exhibit-W-1 to W-14 on formal proof being dispensed with from the side of the Union vide order dated 24-11-2006.

The management has examined Sri Tarun Sen, Chief Manager (Engineer) as M.W.1. But three documents have been marked as ExhibitM-1 to M-3 from the side of the management on formal proof being dispensed with on 24-11-2006.

Representative of the union/workmen has referred to the following decisions in support of their contention and claim statement;

1. Mukund Ltd. –vs- Mukund Staff and Officers' Association. 2004, LAB.I.C. 2791.

2. Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat –vs- Hind Mazdoor Sabha (1995 SOL Case No.234).

3. Maharashtra State Road Transport Corporation Vs Casteribe Rajya Parivahan Karmchari Sanghatana (Maharashtra SRTC) [(2009) 8 SCC 558].

4. Oil and Natural Gas Corporation Vs Krishna Gopal & Ors. (Civil Appeal No. 1878 of 2016).

5. Tinku K & Others –Vs- Union of India [WP (C) No.26934 of 2022].

On the other hand the management has referred to the following decisions in support of its case and contention:-

1. Jiban Krishna Mondal & Ors –vs- State of West Bengal reported in (2015) 12 SCC 74 (para 29).

2.State of Karnataka & Ors. –vs- Uma Devi (3) & Ors. reported kin (200^) 4 SCC 1 (para 15, 15 and 17).

3.Balwant Rai Saluja & Anr. –vs- Air India Ltd. & Ors. reported in (2014) 9 SCC 407 (para 83,87 and 89).

The Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. Vs- Uma Debi & Ors. (2006) 4 SCC 1 has been pleased to hold "public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

A sovereign government, considering the economic situation in the country and the work to be got down, is not precluded from making temporary appointments or engaging workers on daily wages. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time are filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other. Regular appointment must be the rule.

Equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

The Hon'ble Supreme Court of India has been pleased to quote the following from the judgment that has been passed by the Hon'ble Supreme Court in R.N. Nanjundappa vs T.Thimmaiha & Anrs (1972) 2 SCR 799-:

"Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not can go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede such proposition out be usage to introduce new head of appointment in defence of rules or it might have the effect of setting usage naught the rules"

The Hon'ble Supreme Court has been pleased to consider State of Haryana Vs Piara Singh & Ors (1992) 3, SCR 826, where the Hon'ble Supreme Court held "ordinarily speaking, the creation and abolition of posts is the

prerogative of executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be can be exercised either by making rules under the proviso to Article 309 of the Constitution of (in the absence of such Rules) by issuing Rules/ Instructions in exercised of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provision, rules and other instructions, if any, governing the condition of service".

The Hon'ble Supreme Court has been pleased to consider another judgment passed by the Hon'ble Supreme Court in Director, Institution of Management, Development, U.P. vs Smt Puspa Srivastava (1992) 3 SCR 712 where it was held "since the appointment was on purely contractual and adhoc basis on consolidated pay for a fix period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularisation in service in the absence of any role providing for regularisation after the period of service. A limited relief for directing the appointee to be permitted with sympathetic consideration to be continued in service till the end of concerned calendar year was issued. When the appointment was purely on adhoc and contractual basis for a limited period on the expiry of that period right to remain in the post come to an end."

The Hon'ble Supreme has further been pleased to consider Ashwini Kumar –vs- State of Bihar (1996) Supplementary (10) SCR 120 and where it was observed "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted the question of confirmation or regularisation of any irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis mean an available vacancy which is already sanctioned. If the initial entry itself is unauthorised and is not against any sanction vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.

Further, Uma Rani-vs - Registrar, Cooperative Societies and Ors.(2004) 7 SCC 112 was discussed and where it was held when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularised by the State. That regularisation is not and cannot be a mode of recruitment by any state within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularisation further more cannot be give permanence to an employee whose service are adhoc in nature. It was also held that the fact some persons had been working for a long time would not mean that they had acquired a right for regularisation."

The Hon'ble Supreme Court further held that while directing that appointments, temporary or causal, to be regularised or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain –not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on the ground alone it would not have appropriate to jettison the constitutional scheme of appointment and to take view the person who has temporarily or causal got employed should be directed to be continued permanently. By doing so it will be creating another mode of appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties who are not having equal bargaining power, that too would not enable the court to grant any relief to the employees. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, only man that some people who at least got employment temporarily, contractual or causally would not be getting even the employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compel to accept a casual or temporary employment if one incline to go in for such employment. It is in that context that one has to proceed on the basis that employment was accepted fully knowing the nature of it and the consequence following from it. In other works, even while accepting the employment, the persons concerned knows the nature of his employment. It is not an appointment to a post in a real sense and the terms. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the cause of the procedure established, for making regular appointment to available post in the services of the State. The theory of legitimate expectation cannot be successfully advanced by temporary, contractual or causal employees".

Let me decide the present case on the basis of the principle enunciated in the above decisions of the Hon'ble Supreme Court.

Prima facie the claim statement does not reflect the workman was engaged as a Generator Operator by a contractor/service provider of the Bank, rather it shows that the workman was directly appointed by the bank on casual basis to do work in various capacity in the post of Electrician, but he is not paid salary and wages at per with other employees of the Bank. The workman is working under the control and directions of the Chief Officer, Head Office, Planning and Development Department and overall under the control and supervision of Deputy Chief Officer

an Electrical Engineer of the Bank, but payment was made to him through a sham contractor named M/s. M. Nath & Co.

Whereas Exhibit-M-2 shows that there was a dispute in between Tapu Kumar Dey and his employer M/s. M.Nath & Co. before the Assistant Labour Commissioner (Central), Kolkata some time in the year 2004 in respect of deprivation of minimum wage to the employee. There was a Memorandum of Settlemnt between the workman and his employer. The management of M/s. M. Nath & Co. agreed to pay Rs.88.30 to Sri Tapu Kumar Dey w.e.f. 01-06-2004.

Exhibit-M-1 shows that UCO Bank had issued fresh terms of monthly payment to its contractor M/s. M.Nath & Co. in view of wage settlement that took place before the A.L.C. and gave direction to pay minimum wage of Rs.88.30 per day to the workers engaged by it for working in the establishment of the Bank. It further shows Bank gave direction to the contractor to furnish copy of payment document along with monthly bills. Such document leave no room for doubt Sri Tapu Kumar Dey was an employee of M/s. M.Nath & Co. to whom contractor for operation and maintenance for D.G.Set and operation of LT Switches etc. At 16-A, B.T. M.Sarani, Kolkata was given.

Sri Tarun Sen, M.W.-1, Chief Manager (Engineer), Zonal Office, UCo Bank in his evidence stated that the workman who has espoused the present dispute was and is the employee of M/s. M. Nath & Co. That Bank has no control, authority and supervision over any person engaged by the contractors who was entrusted to carry out the contract job of operation and maintenance of A.C. Plant, Generator Set and electricity. Conciliation proceeding was held before the A.L.C., (Central) Calcutta between M/s. M. Nath & Co. and its employee on 09-08-2004 with regard to minimum wages.

He has stated the Bank takes Registration Certificate from A.L.C. if the labour contractors engaged by the Bank is more than 20. The Dena Bank building where one of its branch was located is surrendered before he joined but he admitted Sri Tapu Kumar Dey is working at Head Office of the bank at Dovar Lane. Contract labouers of the contractor of the UCO Bank Head Office are working as Electricians, Electrician-cum-Generator Operator but not as Electrician cum A.C. Plant Operator/ Helper. He has stated without seeing the office record that after the retirement and promotion of Salil Bose, Sudhir Pal, Paritosh Roy and M.R. Dutta who were working as Electrician cum Generator Operator the bank introduced contract labour system.

During cross examination he stated that electric maintenance, maintenance of A.C. Plant and operator and maintenance of Generator Set is required for maintenance of the office but did not say they are essential for smooth functioning of the bank premises. Similarly, he stated without office record he is unable to say that the job done by the contractor employees are perennial in nature.

Exhibit- M-1, Exhibit-M-2, Exhibit-W-7 , W-8 , W-9, W-10 and W-12, W-13, W-14, prima facie shows that M/s. M. Nath & Co. was engaged by UCo Bank for operation of D.G. Set and its maintenance and services, maintenance/operation of all electrical fittings and wiring and LT switches operation at B.T.M.Sarani, Kolkata-700 001.

Those docuements further prove that union had raised an industrial dispute before the A.L.C. (central), Kolkata on 27-11-2003 for absorption and regularization of the concerned workman in the bank for working for more than 18 years under a sham contractor. Such dispute was ended with execution of Memorandum of Settlement before the A.L.C. and where the contractor employer M/s. M.Nath & Co. was directed to pay minimum wages to which the workman was entitled. It further shows the workman on execution of such settlement had dropped all his other demands including regularization. Therefore, it appears the concerned workman was not directly engaged by the Bank on contractual basis as alleged by him, rather he was an employee of the contractor of the Bank.

The Exhibit-W-1 appears to be the Memorandum of Settlement dated 31-01-1979 vide which the bank had absorbed 13 persons in different categories like clerical and subordinate posts w.e.f. 02-02-1979, but it does not disclose those absorbed persons were employees of contractors of the Bank.

Exhibit-W-3 appears to be memo of Central Bank of India dated 31-12-1987 in respect of appointment of one Sri Shyamal Kar was appointed as Plant Operator / Helper in subordinate cadre, but this Tribunal is not inclined to consider those documents as it appears to be the photocopy and without any authenticity of the same, that it was indeed issued by the Central Bank.

Exhibit-W-4 appears to be appointment letter dated 16-12-2018 issued by the United Commercial Bank appointing Peon cum Generator Operator. This being a photocopy and not being an authentic document this Tribunal declined to take into consideration of the same.

Now, law is settled with regard to claim made by the contractor labours for their absorption in regular post, they have to prove that they were engaged to do perennial nature of core work in the establishment of the principal employer. The work done by them is not temporary or seasonal in nature. They discharge their duty in the establishment of the principal employer under the direct supervision and control of the principal employer, or

the principal employer has the authority to take disciplinary action against them and has authority to dismiss them from the service.

It is a matter of common knowledge the core function of the bank is receiving money, keeping money of the customers and lending money. Therefore, it appears that contractors were/are engaged to provide incidental services of maintenance of electricity, Generator Set, A.C. Plants.

From the above documents it is seen the Bank used to get all services which is incidental to its business done through its contractors/service providers' employees. The concerned workman was employed by the contractor to do the job of a generator operator etc. His salary was paid by the contractor and who used to raise bills and submit before the Bank along with Log book in case of overtime allowance. No cogent and satisfactory evidence have come on record to show that bank indeed used to supervise the work of the workman and the bank has/had the authority to dismiss the workman.

It is admitted fact that the contractor had less than 20 employees working for it at the relevant time. Therefore, in view of provision of section 1 (4) (a) read with section 12 of the CLRA Act, the contractor need not obtain license for supply of employees to the principal employer. Therefore, question of obtaining license under the Act by the contractor does not arise.

However, Exhibit-W-11 shows that UCo. Bank have engaged more than 32 contractors to do different nature of works such as plumbing, lift installation, electrification works, comprehensive maintenance work, maintenance of A.C. machines and maintenance of the same, internal electric works, operation of D.G.Set, HT and Lt, OCB and water pump, maintenance of the same, electric maintenance works, telecom maintenance works, repair and renovation of building, by engaging more than 20 contractor employees in different offices which are not related to the core function of the bank. Exhibit –W-11 further shows that bank was already a registered establishment under CLRA Act.

Therefore, it is seen the concerned workman was engaged by contractor having less than 20 employees at the relevant time and question of obtaining licence by it under CLRA Act does not arise. On the other hand the Bank having engaged more than 32 contractors to do different kind of jobs at its different establishments it was/is duly registered under the CLRA Act.

It is worth to mention here that no material whatsoever has come from the side of the Union or workman, that bank is a notified establishment under section 10 of the CLRA Act. In that case the bank is not prevented from engaging contractor labour under the Act to get its incidental/non-core work done through contractors' employees.

Further, the Union has failed to produce any document to prove that the workman is/was working against the sanctioned vacant post.

Exhibit-W-14 shows, the principal employer had supplied the schedule of work for operation of one DG Set and its maintenance and service along related work of wiring and fitting at its Office 16-A, B.T.M.Sarani to the contractor employer and it was the contractor to get the work done as per the schedule given by the bank. Therefore, it is seen that the principal employer had no control over the work to be done by the contractor or by his employees and which prove the contractor's employee was not under the control of the management of the bank or his work was supervised by the authority of the bank.

Nothing has come on record that a contract between the principal employer and the contractor employer to be sham, nominal or merely a camouflage to deprive contractor's employee with permanent job and employment benefits. More so, no evidence has come on record to show under which officer of the bank the concerned workman used to work or under whose direction he used to discharge his duty/work. Therefore, it is seen that bank had no control over the employees of the contractor. Nothing has come on record to show that Bank has power to dismiss them from service after holding domestic enquiry. In fact, it has come on record salary is paid to the concerned workman by the contractors.

The work of a Generator Operator cannot be said to be perennial in nature. His service is required only as and when there is a load shedding or fault occurs in the system. The nature of his job is not like that of a regular staff of Bank. So the job of a generator operator cannot be said to be perennial in nature.

Further, union failed to produced documents or examine Sri Salil Bose, Sri Sudhir Pal, Sri Paritosh Roy and M.R.Dutta before this Tribunal to prove indeed they were permanent regular employees of the bank in subordinate cadre and they used to discharge the functions of Electricians, A.C. Plant Operator, DG Set Operator and Pump Operator or on their transfer, retirement or on promotion vacancy was created and against such vacancy the bank instead of filling up the post by regular recruitment got the work done through contractors. The union miserably failed to produce documents to show there is sanctioned posts in the bank in respect of D.G.Set operator and the post is still lying vacant.

In view of Uma Debi (supra) that no regularization or absorption of contractors' employee can be made, no matter how long he might have worked and that too without following the recruitment policy and recruitment rules. The regularisation cannot be a mode of recruitment.

In view of the above, this Tribunal holds the workman being the employee of contractor employer cannot claim regularisation and absorption in the service of the bank and that too against non-existence post. This Tribunal does not find any merit in the reference. Accordingly the reference No. 30 of 2004 is dismissed. Award of dismissal is passed.

K. D. BHUTIA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का.आ. 1221.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (22/2022) प्रकाशित करती है।

[सं. एल -12011/08/2022-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.22/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/08/2022-IR(B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL, CHENNAI

ID No. 22/2022

Present: DIPTI MOHAPATRA, LL.M.

PRESIDING OFFICER

Date: 09.06.2023

The General Secretary
State Bank Employees Union
Singapore Plaza
No. 164, Linghi Chetty Street
Chennai-600001 : 1st Party/Petitioner Union

AND

1. The Manager-HR
   State Bank of India, RBO-IV
   Madurai Rural Zonal Office
   Dr. Ambedkar Road
   Madurai-625002 : 1st Respondent
2. The Deputy General Manager (B&O)
   State Bank of India, Administrative Office
   State Bank of India
   Trichy-620001 : 2nd Respondent

Appearance:

For the Petitioner Union : Advocate, Sri S.D. Srinivasan
For the 2nd Party/Respondent : Advocate, Sri S. Makesh

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/08/2022-IR (B.I) dtd. 22.02.2022 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the management of State Bank of India to deduct salary of S/Sri P. Jayaraj and S. Prasad for their period of absence during March, 2020 to July, 2020 when intense lockdown was clamped by the Authorities due to pandemic COVID-19 rendering the workmen unable to attend the Office due to lack of communication is fair, legal and justified? If not, what relief the workmen are entitled to?"*

2. On receipt of the above reference from the Appropriate Government, the same is registered as ID No. 22/2022 and notices were issued to both the parties for their appearance on 13.06.2022. On that day, Authorization Memo and Claim Statement was filed on behalf of the First Party Petitioner Union. The Counsel for the Respondent entered appearance and filed Counter Statement on 26.09.2022. Accordingly, the First Party Petitioner Union was directed to file Affidavit-Evidence. After three adjournments, on dtd. 20.03.2023, the Authorized Representative, the General Secretary appeared and expressed not to proceed with the case on the ground that of the .Settlement executed on 30th December, 2022 in between the First Party Union with the Respondent Management. The Joint Memorandum of Settlement is produced and marked as Ext W1.

3. At the outset, it is pertinent to mention that the General Secretary of the First Party Union is contesting the case on being authorized by the Petitioners, S/Sri P. Jayaraj and S. Prasad. The Memorandum of Settlement being a part of record is taken into judicial note. The Settlement under Section-2(p) and Section-18(1) was duly signed by the General Secretary of the First Party Union, the Regional Manager, RBO, Dindigul so also the witness P. Padmalatha, SBI, RBO Dindigul. But the Petitioners viz. S/Sri P. Jayaraj and P. Prasad were not the signatories on the Settlement Ext.W1. Thus this Tribunal felt proper to record their statement in the interest of justice, if they on their own volition agreed with the terms and conditions of settlement executed on 30.12.2022.

4. The statements of both the petitioners were recorded. Both of them stated that the settlement was executed in their presence and the contents of the settlement was read over and explained to them. There was no coercion or influence on them from any corner. Both of them further stated that they would have no more grievance against the Respondent as the Respondent's Bank is ready to release one month's salary of Rs. 55,222/- to Sri P. Jayaraj in lieu of the original total claim of Union under the subject Industrial dispute. So also the Respondent's Bank shall restore one month Privilege Leave to the Leave credit of S. Prasad. in lieu of the original total claim of Union under the subject Industrial dispute

5. In view of the submission of both the Petitioners P. Jayaraj, S.Prasad and the Authorized Representative, the General Secretary First Party Union, it is held that both the Petitioners voluntarily agreed to the Settlement executed on 30.12.2022 and they are not interested to proceed with the case. Thus, their submission to dispose of the case has got sufficient force.

In the result, the ID case 22/2022 is disposed of in view of the Settlement between the parties on dtd. 30.12.2022.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 09.06.2023)

Witnesses Examined:

For the 1st Party/Petitioner Union	:	WW1, Sri P. Jayaraj
		WW2, Sri S. Prasad
For the Respondent	:	None

Documents Marked :

On the petitioner's side

Ext.No.	Date	Description
Ext.W1	30.12.2022	Memorandum of Settlement u/s 2(p) and Section-18(1) of the ID Act, 1947 executed

in between the First Party Union and the

Respondent's Management

On the Respondent's side

Ext.No.	Date	Description

None

Presiding Officer

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1222.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल **बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (40/2016) प्रकाशित करती है।

[सं. एल -39025/01/2023-आई आर (बी-II)-24]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.40/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023-IR(B-II)-24]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT &EPF APPELLATE TRIBUNAL,

CHENNAI

ID No. 40/2016

Present: DIPTI MOHAPATRA, LL.M.

PRESIDING OFFICER

Date: 27.06.2023

Sri K. Pounraj

S/o K. Karuppaiya

No. 35/66, Kaliyamman Koil Street

Sivakasi

Virudhunagar District : Petitioner

AND

1. The Branch Manager

   Punjab National Bank

   No. 104, 1st Floor, Katcheri Street

Virudhunagar-626001 : First Respondent

2. The Chief Manager
Punjab National Bank
Circle Office (HRD)
Kailasapuram
Trichy-620014 : Second Respondent

3. The Functional Manager (HRD)
Punjab National Bank
Circle Office (HRD)
Khandha Enclave
179, Sarojini Street
Ramnagar
Coimbatore-641009 : Third Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s S. Arunachalam & Associates

For the 1st, 2nd & 3rd Respondent : Advocate, Sri S. Jayaraman

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant K. Pounraj raises the dispute challenging the denial of his job as Courier / Peon by the First Respondent Bank since 17.03.2011.

The case of the Applicant in brief is that he was appointed as Part-Time Sweeper in the First Respondent Bank on 17.03.2011 with salary/wage at the rate of Rs. 225/- per day. He has studied upto 7th Standard. He was all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon. He was sponsored by the Employment Exchange, Virudhunagar. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job but on the other hand, despite of his continuance rendering unblemished service for 4 years, 3 months and 14 days, no preference was given by the Respondent to him for filling up the permanent vacancies as per Bipartite Settlement dtd. 19.10.1996. On the other hand, the Applicant was denied the job on 30.06.2015 without prior intimation. It is further pleaded that since he has completed continuous service of 480 days preceding to the date of denial of job, is eligible for regularization under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act,1961. It is further contended that when some vacancies arose in the Respondent's Bank, the Applicant made oral and written Representations to place him on permanent post. The 1st Respondent sent the Representation with his recommendation to the Appropriate Authority, the 2nd Respondent for consideration. The Representation was never considered by the Second Respondent, on the other hand resorted to direct recruitment of subordinate cadre posts for filling of 80 posts in Trichy Circle vide advertisement on dtd 03.12.2014 in Tamil Daily i.e. "Thanthi". The denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section 2(oo) of ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of him. He raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of his reinstatement in service with back wages and all other attendant benefits and regularization of his service from the date of his appointment

3. Both the Respondents entered appearance by filing Common Counter traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a "Workman" within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent's Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1984 reached by the All India PNB Employees Federation and the Bank, and the same settlement was circulated vide Circular No. 772 dtd. 17.05.1984. This settlement clearly speaks about the procedures stated therein to be followed unless the Thikana system is prevailed in the particular area. The

said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said PD circular, the Bank had issued another PAD Circular No. 72 dtd.11.02.2012 which also provides for Rules regarding the eligibility for posting of Part-Time Sweepers in vari It contended that no right exists for any person to claim regularization / absorption in Bank which dehors the Bank's Rules and Guidelines. The applicability of Tamil Nadu Industrial Establishment (Conferment of permanent status to workmen) Act at 1961 was challenged in view of ID Act. The Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed by any of the Respondent on 17.03.2011 or terminated from service on 30.06.2015. There was no Service Agreement in between the Bank and the Petitioner. There exists no relationship between the Respondent and the Petitioner as Employer and Employee. The claim of the Applicant is not sustainable in the eye of law. The Petitioner / Applicant is not entitled to any relief as sought for.

4. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, K. Pounraj while examined himself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 26 documents marked as Ext W1 to Ext W 26. The Petitioner also on three more volumes i.e. the Sastry Award (Volume II,)Desai Award(volume III) and Memorandum of Settlement(Volume IV), which are filed as common documents for all the batch cases. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and produced 6 documents marked as Ext.M1 to Ext.M6.

The following issues emerge in the pleadings of the parties:

(i) If the Applicant is a Workman within the purview of 2(s) of the ID Act?

(ii) Whether there exists relationship of Employer-Employee in between the Respondent and the Petitioner?

(iii) Whether the Applicant was terminated without prior notice?

(iv) To what relief the Applicant / Petitioner is entitled to?

Issues (I) & (II)

5. Since the Issues I & II are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner states to have joined the Respondent Bank on 17.03.2011 as Part-Time Sweeper (PTS) and all along doing the menial work such as Sweeping, Cleaning and File Stitching, even carrying the initial remuneration was paid to him on daily basis at the rate of Rs 225/- per day. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Petitioner despite of his service of 4 years 3 months and 14 days. The Applicant was denied the job on 30.06.2015 without prior intimation. In view of the Bipartite Settlement dtd19.10.1996, the Applicant is entitled to get the preference to fill up the permanent vacancy when completes 5 years of service. His representation in this regard was never considered. WW2 viz. Shri Shankaravadivelu, one retired Clerk of Respondent's Bank now holds the post of the General Secretary of "Punjab National Employees Union" which is affiliated to "All India Bank Employees Association" adduces evidence in support of the Petitioner. He categorically states to have rendered 25 years of service in the Respondent Bank till his superannuation in the year 2019. He has direct knowledge that since the engagement of the Petitioner dtd. 17.03.2011 as Temporary Employee as PTS in the Respondent's Bank, his service was utilized for whole day. The Petitioner was not only doing the menial work such as Sweeping, Cleaning, etc. but was paying Electricity and Telephone Bills, Clearing Cheques, escorting the staff for refilling of ATM and also many more works, as good as the job of a Permanent Employee. But the Applicant was never been paid wages / remuneration at par with a Permanent Employee.

6. The Respondent on the other hand adduces evidence through the Manager (HR), Mitra Teja who denies the pleadings of the Petitioner and the statement of both the Witnesses. In support of the contentions made in Counter Statement, it is stated that the Petitioner cannot plead to project himself as a "Workman" within the purview of Section-2(s) of the Industrial Disputes Act, as much as he was engaged of and on whenever exigencies arose on the part of the local Branch Manager who lacks any authority to give appointment to anyone. The Applicant on the other hand has been adequately paid for his service rendered for the Branch. There exists no Employer-Employee relationship in between the Respondents and the Petitioner. The claim of the Petitioner amounts to "backdoor entry" thus the claim for reinstatement with back wages is not sustainable.

7. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record. In view of the discussion held in preceding paragraphs with regard to the pleadings of the parties, it is to be seen if the Petitioner is a "Workman" within the purview of the Act and if there exists any Employer-Employee relationship in between the Petitioner and the Respondent.

8. In this context the documents filed by the Petitioner are taken into consideration. The documents are haphazardly filed. Even though the Petitioner claims to have joined the Bank on 07.03 2011, no document in its support is filed. Ext.W1 dated 27.12.2011 and Ext.W3 dated 17.09.2012 reveal that the BM forwarded the Application of Petitioner to Senior Manager HRD, Circle office Trichy, recommending his name for consideration for the post of PTS. The regulation regarding absorption of PTS dtd. 17.02.2014 and the Memorandum for Absorption dtd. 22.02.2014 are filed and marked as Ext.W8 & Ext.W10 respectively. Ext.W9 dated 19.02.2014 is the letter of the Chief Manager for recruitment of PTS. The General Secretary circulated a proposal for conversion of Part-Time Employees as Peon vide his letter to All India Punjab National Bank Employees Federation (AIPNBEF) vide Ext.W11 dtd. 22.02.2014. Ext.W12 dtd. 04.03.2014 is an internal communication of a Circular regarding absorption of PTS. A proposal initiated by the General Secretary vide Ext.W16 dtd. 12.02.2015 was sent to the General Manager (P&A) to fix the educational criteria for the post of Peon as minimum 8th Standard instead of 10 + 2. The General Secretary sent a letter to the temporary staff members on dtd. 27.05.2015 vide Ext.W17 to provide the details in pursuant to Ext.W16. A Special Recruitment Drive was initiated by the Circle Office, Trichy vide Ext.W18 dtd. 01.07.2015 for recruitment to fill the post of Peons in Subordinate Cadre. Ext.W2, Ext.W13 to Ext.W15 and Ext.W19 and Ext.W20 are the documents showing the work assignments of the Petitioner. By producing such document, the Petitioner tries to convince that he was He was assigned to purchase Adhesive Stamps for the Respondents as per the aforesaid stated exhibits. It is further contended that after the oral termination, the Petitioner moved the Deputy General Manager vide his letters dtd. 07.02.2016 (Ext.W21) to consider him on Permanent Post. Ext.W22 is the copy of Ext.W21. Ext.W24 is the Circular dtd. 31.05.2017 issued by the Head Office for recruitment of Workman Staff (other than Godown Keeper). Ext.W25 and Ext.W26 are the extracts of 8th and 9th Bipartite Settlements. After the oral termination as claimed by the Petitioner, he raised the dispute before the ALC, Madurai. It reveals that the Respondent entered appearance in the Conciliation Proceedings and furnished reply of objection dtd. 30.08.2016 vide Ext.W23. The Respondent explained therein the reasons of non-consideration of the Representation dtd. 01.06.2016 of the Petitioner. The said Representation dtd. 01.06.2016 has not been filed by the Petitioner.

9. In view of the discussion held supra, when the engagement of the Petitioner stands disputed, being challenged by the Respondent, onus of proof lies on the Petitioner. It is pertinent to mention even though the petitioner produced a number of documents, none of those support the case of the Petitioner. It is found that the Petitioner seriously failed to produce a single scrap of document with regard to his engagement. At the cost of repetition, it needs mention that the Ext.W1, Ext.W3 and Ext.W6 cannot be accepted as the document of the appointment/engagement of the petitioner. It reveal that the then Branch Manager has simply forwarded the applications of the petitioner to the higher authority to consider him to fill up the vacancy post of PTS. Ex.W21 and Ex.W22 (same) representations (in Tamil) of the petitioners addressed to the Manager and the Dy. Manager on 07.02.2016 to consider his case for filling up the post of part time sweeper. No document has been produced if his applications under Ex.W1, Ext.W3 and Ext.W6 and the representations Ex.W21 and Ext.W22 were ever considered by the Competent Authority. Even if for the sake of argument advanced by the Counsel for the Petitioner is accepted, the Petitioner on several occasions submitted applications and representations as per the above exhibits, such mere fact would not suffice to hold that he was engaged by the Competent Authority. It needs mention that no such correspondence was made to him in this regard. Besides, while the petitioner claimed to have rendered service for the Respondent's Bank, fails to file a single scrap of document, showing disbursement of any amount towards his remuneration or wage was ever made by the Respondent. No document is also filed showing duty assignment chart. The Ext.W2, Ext.W13 to Ext.W15, Ext.W19 and Ext.W20 are produced showing that he was assigned to purchase Adhesive Stamps. In this regard, the Petitioner also fails to produce any document regarding payment of any remuneration. Such documents even if it reflects the name of the Petitioner will in no way suffice to hold that the Petitioner was engaged / employed as Part-Time Sweeper by the 1st or 2nd Respondent. On the other hand, the pleadings and submissions of the Respondent is accepted that the Branch Manager as and when requires hands, engages the local person and the adequate remuneration is being paid to them. In the given fact and circumstance, even if for a while it is accepted that this Petitioner has purchased some Adhesive Stamps as per the Exhibits, he must have been adequately paid. Besides, the Petitioner miserably failed to prove with regard to his claim of continuity of her service from the date of his joining from 17.023.2011 till 30.06.2015. In this context, the Learned Counsel for the Respondent relies on the judicial verdict of the **High Court of Judicature of Madras** in the case of ***Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No. 23017/2019 dtd. 06.10.2020*** .It is held by their Lordships that *in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence stating that she was terminated from job without prior notice.* Accordingly, in view of the facts discussed above, it is held that at any stretch of prevailed circumstance, the Petitioner cannot claim to have been engaged as Part-Time Sweeper by the 1st and 2nd Respondent. Thus, the Petitioner cannot be defined as a Workman under the 2(s) of the ID Act and also there exists no Employer-Employees relationship in between the Respondent and Petitioner.

The Issues (i) & (ii) are answered against the Petitioner.

Issues (III) & (IV)

10. In view of the findings under Issue No. (i) and (ii) above, there needs no discussion on the Issues (iii) and (iv).

The Issues (iii) & (iv) are answered in negative. of the Petitioner.

The Petitioner is accordingly is not entitled to any relief as sought

The ID case stands dismissed.

The Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Sri K. Pounraj
	:	WW2, Sri L. Sankaravadivelu
For the 2nd Party/Management	:	MW1, Sri Mitra Teja

Documents Marked:-
On the petitioners side

Ex.No.	Date	Description
Ex.W1	27.12.2011	Appointment of Part-Time Sweeper
Ex.W2	06.01.2012	Purchase of adhesive stamps by K.Pounraj
Ex.W3	17.09.2012	Appointment of Part-Time Sweeper
Ex.W4	17.10.2013	Letter from Manager regarding recruitment of Part-Time Sweeper
Ex.W5	25.10.2013	Forwarding application of K.Pounraj by the Manager
Ex.W6	14.11.2013	Application of K.Pounraj forwarded by Manager
Ex.W7	20.01.2014	Transfer Certificate of K.Pounraj forwarded by Manager
Ex.W8	17.02.2014	Regulation regarding absorption of PTS
Ex.W9	19.02.2014	Recruitment of PTS letter from Manager
Ex.W10	22.02.2014	Memorandum for absorption
Ex.W11	22.02.2014	Conversion of PTS as Peons
Ex.W12	04.03.2014	Circular regarding absorption of PTS
Ex.W13	06.03.2014	Adhesive stamps purchased by K.Pounraj
Ex.W14	09.10.2014	Purchase of adhesive stamps by K.Pounraj
Ex.W15	03.02.2015	Purchase of adhesive stamps by K.Pounraj
Ex.W16	12.02.2015	Educational qualification to Peon
Ex.W17	27.05.2015	Letter from General Secretary from the Union
Ex.W18	01.07.2015	Special recruitment trivet of Peons
Ex.W19	25.07.2015	Purchase of adhesive stamps by K.Pounraj
Ex.W20	11.12.2015	Purchase of adhesive stamps by K.Pounraj
Ex.W21	07.02.2016	Demand of Employment after Termination to the Branch Manager by K.Pounraj
Ex.W22	07.02.2016	Demand of Employment after Termination to the General Manager by K.Pounraj
Ex.W23	30.08.2016	Reply filed by Management before ALC (C)-K.Pounraj

Ex.W24	31.05.2017	Circular from the General Secretary of the Employees Federation
Ex.W25	-	Relevant portion of 8th bipartite settlement
Ex.W26	-	Relevant portion of 9th bipartite settlement

Documents Marked:-

On the Respondent's side

Ex.No.	**Date**	**Description**
Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and appointment
Ex.M2	11.02.2012	Circular issued by the Respondent Bank
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the Bank
Ex.M4	21.09.2015	Circular issued by the bank with regard to the Recruitment and appointment of Part-Time Sweeper
Ex.M5	04.07.2016	Circular issued by the Bank with regard to Alternate mechanism in lieu of interview for recruitment of full Time/Part Time Sweeper
Ex.M6	28.11.2018	Circular No.430 Banning the Temporary Appointment in the Bank.

नई दिल्ली, 19 जुलाई, 2023

का. आ. 1223.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल **बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (42/2016) प्रकाशित करती है।

[सं. एल -39025/01/2023-आई आर (बी-II)-25]

सलोनी, उप निदेशक

New Delhi, the 19th July, 2023

S.O. 1223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.42/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023-IR(B-II)-25]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL, CHENNAI

ID No. 42/2016

Present: DIPTI MOHAPATRA, LL.M.

PRESIDING OFFICER

Date: 30.06.2023

Smt. J. Thamilarasi,
W/o Jothivel,
No. 423, Keela Street,
Bikshander Koil,
Trichy – 620116. : Petitioner

AND

1. The Branch Manager,
Punjab National Bank,
Trichy Main Branch,
Trichy – 620 001. : First Respondent

2. The Deputy General Manager,
Punjab National Bank
Circle Office (HRD)
Presently at:
Khandha Enclave
179, Sarojini Street
Ramnagar
Coimbatore-641009 : Second Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s S. Arunachalam & Associates
For the 1st & 2nd Respondent : Advocate, Sri S. Jayaraman

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant Smt. J. Thamilarasi raises the dispute challenging the denial of her job as Part-Time Sweeper/ Peon by the First Respondent Bank since 30.06.2015.

The case of the Applicant in brief is that she was appointed as Part-Time Sweeper / Peon in the First Respondent Bank on 02.06.2008 with salary/wage at the rate of Rs. 175/- per day. She was not educationally qualified. The Post of Sweeper does not require any educational qualification. She belongs to SC category. She was all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon.

But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job but on the other hand despite of her continuance in job for 7 years and 29 days, the Applicant was denied the job on 30.06.2015 without prior intimation. Since the Applicant has completed unblemished service for the above period, preference should have been given by the Respondent to her for filling up the permanent vacancies pursuant to Bipartite Settlement dtd.19.10.1996. Besides she has completed her continuous service of 480 days preceding to the date of denial/termination thus is eligible for regularization under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1961. It is further contended that when some vacancies arose the Applicant made oral and written Representations to place her on permanent post. The 1st Respondent sent the

Representation with her recommendation to the Appropriate Authority, the 2nd Respondent for consideration. The Representation was never considered by the Second Respondent, on the other hand resorted to direct recruitment of subordinate cadre posts for filling of 80 posts in Trichy Circle vide advertisement on dtd 03.12.2014 in Tamil Daily i.e. "Thanthi". The denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section 2(oo) of ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of her. She raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of her reinstatement in service with back wages and all other attendant benefits and regularization of her service from the date of his appointment

3. Both the Respondents entered appearance by filing Common Counter traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a "Workman" within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent's Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1984 reached by the All India PNB Employees Federation and the Bank, and the same settlement was circulated vide Circular No. 772 dtd. 17.05.1984. This settlement clearly speaks about the procedures stated therein to be followed unless the Thikana system is prevailed in the particular area. The said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said PD circular, the Bank had issued another PAD Circular No. 72 dtd.11.02.2012 which also provides for Rules regarding the eligibility for posting of Part-Time Sweepers in various branches. It is further contended that no right exists for any person to claim regularization / absorption in Bank which dehors the Bank's Rules and Guidelines. The applicability of Tamil Nadu Industrial Establishment (Conferment of permanent status to workmen) Act at 1961 was challenged in view of ID Act. The Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed by any of the Respondents on 02.06.2008 or terminated from service on 30.06.2015. There was no Service Agreement in between the Bank and the Petitioner. The claim of the Applicant is not sustainable in the eye of law. The Petitioner / Applicant is not entitled to any relief as sought for.

4. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, J. Thamilarasi while examined herself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 18 documents marked as Ext.W1 to Ext.W18. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and produced 6 documents marked as Ext.M1 to Ext.M6.

The following issues emerge in the pleadings of the parties:

(i) If the Applicant is a Workman within the purview of 2(s) of the ID Act.

(ii) Whether there exists relationship of Employer-Employee in between

the Respondent and the Petitioner.

(iii) Whether the Applicant was terminated without prior notice?

(iv) To what relief the Applicant / Petitioner is entitled to?

Issues (i) & (ii)

5. Since the Issues (i) & (ii) are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner states to have joined the Respondent Bank on 02.06.2008 as Part-Time Sweeper (PTS) and all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon. The initial remuneration was paid to him on daily basis at the rate of Rs 175/-. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Petitioner despite of her service of 7 years 29 days but the Applicant was denied the job on 30.06.2015 without prior intimation. In view of the Bipartite settlement dtd 19.10.1996, the Applicant is entitled to get the preference to fill up the permanent vacancy when completes 5 years of service. Her representation in this regard was never considered. WW2 viz. Shri Shankaravaduvelu, one retired Clerk of Respondent's Bank now holds the post of the General Secretary of "Punjab National Employees Union" which is affiliated to "All India Bank Employees Association" adduces evidence in support of the Petitioner. He categorically states to have rendered 25 years of service in the Respondent Bank till his superannuation in the year 2019. He has direct knowledge that since the engagement of the Petitioner dtd. 02.06.2008 as Temporary Employee as PTS in the Respondent's Bank, her service was utilized for whole day. The Petitioner was not only doing the menial work such as Sweeping, Cleaning, File Stitching, Carrying files and worked as of a Messenger / Peon as good as the job of a Permanent Employee. But the Applicant was never been paid wages / remuneration at par with a Permanent Employee.

6. The Respondent on the other hand adduces evidence through the Manager (HR), Mitra Teja who denies the pleadings of the Petitioner and the statement of both the Witnesses. In support of the contentions made in Counter Statement, it is stated that the Petitioner cannot plead to project himself as a "Workman" within the purview of Section-2(s) of the Industrial Disputes Act, as much as she was engaged of and on whenever exigencies arose on the part of the local Branch Manager who lacks any authority to give appointment to anyone. The Applicant on the other hand has been adequately paid for his service rendered for the Branch. There exists no Employer-Employee relationship in between the Respondents and the Petitioner. The claim of the Petitioner amounts to "backdoor entry" thus the claim for reinstatement with back wages is not sustainable. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record.

7. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record. In view of the discussion held in preceding paragraphs with regard to the pleadings of the parties, it is to be seen if the Petitioner is a "Workman" within the purview of the Act and if there exists any Employer-Employee relationship in between the Petitioner and the Respondent.

8. In this context the documents filed by the Petitioner are taken into consideration. The documents are haphazardly filed. Even though the Petitioner Claims to have joined the Bank on 02.06 2008 no document in its support is filed. It reveals from Ext.W1 dated 29.11.2010 is a communication of Senior Manager of Bikshandar Koil Branch to the Senior Manager (HRD) recommending the name of the Petitioner to post her as PTS in their branch. Ext.W2 is a Medical Certificate dtd. 09.01.2014. Ext.W3 dtd. 09.01.2014 seems to a forwarding letter showing the application of the Petitioner was forwarded by the Chief Manager to the Senior Manager (HRD), Trichy wherein the Senior Manager was requested to consider the application of the Petitioner as her service was utilized by the Branch since June 2008. Ext.W8 dtd. 08.05.2014 is an application of the Petitioner to the Dy. General Manager, Trichy requesting to continue her on job, Ext.W9 is the Bio-Data of the Petitioner, Ext.W18 is a Group Photo taken in the Branch with Branch Staff filed by the Petitioner

The regulation regarding absorption of PTS and the Memorandum for Absorption are fled and marked as Ext.W4 dated 17.02.2014 and Ext.W5 dated 22.02.2014. Ext.W7 dtd. 04.03.2014 is an internal communication of the General Secretary who circulated a proposal for conversion of Part-Time Employees as Peon vide his letter to All India Punjab National Bank Employees Federation (AIPNBEF). A proposal initiated by the General Secretary vide Ext.W10 dtd. 12.02.2015 was sent to the General Manager (P&A) to fix the educational criteria for the post of Peon as minimum 8^{th} Standard instead of 10 + 2. The General Secretary sent a letter to the temporary staff members on dtd. 27.05.2015 vide Ext.W11 to provide the details in pursuant to Ext.W10. A Special Recruitment Drive was initiated by the Circle Office, Trichy vide Ext.W12 dtd 01.07.2015 for recruitment to fill the post of Peons in Subordinate Cadre. After termination, the Petitioner moved the Deputy General Manager vide her letters vide Ext.W13 dtd. 07.02.2016 to consider her on Permanent Post. Ext.W14 is the copy of Ext.W13. Ext.W15 is the Circular dtd. 31.05.2017 issued by the Head Office for recruitment of Workman Staff (other than Godown Keeper). Ext.W16 and Ext.W17 are the extracts of 8^{th} and 9^{th} Bipartite Settlements.

9. In view of the discussion held supra, when the engagement of the Petitioner stands disputed, being challenged by the Respondent, onus of proof lies on the Petitioner. It is pertinent to mention even though the petitioner produced a number of documents, none of those support the case of the Petitioner. It is found that the Petitioner seriously failed to produce a single scrap of document with regard to her engagement. At the cost of repetition, it needs mention that the Ext.W1 to Ext.W3 and Ext.W11 and Ext.W12 cannot be accepted as the document of the appointment/engagement of the petitioner. It reveals that the then Branch Manager has simply forwarded the applications of the Petitioner to the higher authority to consider him to fill up the vacancy post of PTS. Ext.W11 and Ex.W12 (same) representations (in Tamil) of the Petitioner addressed to the Manager and the Dy. Manager on 07.02.2016 to consider his case for filling up the post of part time sweeper. No document has been produced if her applications were ever considered by the Competent Authority. Even if for the sake of argument advanced by the Counsel for the Petitioner is accepted, the Petitioner on several occasions submitted applications and representations as per the above exhibits, such mere fact would not suffice to hold that she was engaged by the Competent Authority. It needs mention that no such correspondence was made to her by the Respondent's Bank in this regard. Besides, while the petitioner claimed to have rendered service for the Respondent's Bank, fails to file a single scrap of document, showing disbursement of any amount towards his remuneration or wage, was ever made by the Respondent. The Petitioner failed to produce any duty assignment chart as claims to have worked other than the her work of a Sweeper. Even if the contents of Ext.W1 is taken into account that the Branch was utilizing the service of the Petitioner, in absence of any candid and convincing evidence, such mere fact of utilization of service of Petitioner would no way be accepted in her favour. On the other hand, the pleadings and submissions of the Respondent is accepted that the Branch Manager as and when requires hands, engages the local person and the adequate remuneration is being paid to them. In the given fact and circumstance, even if for a while it is accepted that this Petitioner has purchased some Adhesive Stamps as per the Exhibits, she must have been adequately paid. Besides, the Petitioner miserably failed to prove with regard to his claim of continuity of her service from the date of his joining from 20.08.2001 till 30.06.2015. In this context, the

Learned Counsel for the Respondent relies on the judicial verdict of the **High Court of Judicature of Madras** in the case of ***Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No.23017/2019 dtd. 06.10.2020*** .It is held by their Lordships that "*in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence stating that she was terminated from job without prior notice".*

10. Accordingly, in view of the facts discussed above, it is held that at any stretch of prevailed circumstance, the Petitioner cannot claim to have been engaged as Part-Time Sweeper by the 1st and 2nd Respondent. Thus, the Petitioner cannot be defined as a Workman under the 2(s) of the ID Act and also there exists no Employer-Employee relationship in between the Respondent and Petitioner.

The Issues (i) & (ii) are answered against the Petitioner.

Issues (iii) & (iv)

11 In view of the findings under Issue No. (i) and (ii) above, there needs no discussion on the Issues (iii) and (iv).

The Issues (iii) & (iv) are answered in negative.

The Petitioner is accordingly is not entitled to any relief as sought.

The ID case stands dismissed.

The Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 30.06.2023)

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Smt. J. Thamilarasi
	:	WW2, Sri L. Sankaravadivelu
For the 2nd Party/Management	:	MW1, Sri Mitra Teja

Documents Marked:-
On the petitioners side

Ex.No.	Date	Description
Ex.W1	29.11.2010	Posting of Permanent PTS
Ex.W2	09.01.2014	Certificate from doctor of the age of Thamilarasi
Ex.W3	09.01.2014	Chief Manager forwarding the application of Thamilarasi
Ex.W4	17.02.2014	Regulation regarding absorption of PTS
Ex.W5	22.02.2014	Memorandum for absorption
Ex.W6	24.02.2014	Conversion of PTS as Peons
Ex.W7	04.03.2014	Circular regarding absorption of PTS
Ex.W8	08.05.2014	Application from J. Thamilarasi
Ex.W9	09.05.2014	Bio-Data of J. Thamilarasi
Ex.W10	12.02.2015	Educational Qualification to Peon
Ex.W11	27.05.2015	Letter from General Secretary from the Union
Ex.W12	01.07.2015	Special Recruitment trivet of Peon
Ex.W13	07.02.2016	Demand of Employment after termination to the Branch Manager by J. Thamilarasi
Ex.W14	07.02.2016	Demand of Employment after termination to the General Manager by J. Thamilarasi
Ex.W15	31.05.2016	Circular from the General Secretary of the Employees Federation
Ex.W16	-	Relevant portion of 8th Bipartite Settlement
Ex.W17	-	Relevant portion of 9th Bipartite Settlement
Ex.W18	-	Group Photo taken on the occasion of the visit of Circle Head Mr. Veerappan to Bhikshandar Kovil, Trichy

Documents Marked:-
On the Respondent's side

Ex.No.	Date	Description

Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and appointment
Ex.M2	11.02.2012	Circular issued by the Respondent Bank
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the Bank
Ex.M4	21.09.2015	Circular issued by the bank with regard to the Recruitment and appointment of Part-Time Sweeper
Ex.M5	04.07.2016	Circular issued by the Bank with regard to Alternate mechanism in lieu of interview for recruitment of full Time/Part Time Sweeper
Ex.M6	28.11.2018	Circular No.430 Banning the Temporary Appointment in the Bank.

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